National Library of Canada
Canadian Theses Service
Ottawa, Canada
K1A 0N4

Bibliothèque nationale du Canada
Services des thèses canadiennes

CANADIAN THESES

THÈSES CANADIENNES

NOTICE

The quality of this microfiche is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Previously copyrighted materials (journal articles, published tests, etc.) are not filmed.

Reproduction in full or in part of this film is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30.

AVIS

La qualité de cette microfiche dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

Les documents qui font déjà l'objet d'un droit d'auteur (articles de revue, examens publiés, etc.) ne sont pas microfilmés.

La reproduction, même partielle, de ce microfilm est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30.

THIS DISSERTATION HAS BEEN MICROFILMED EXACTLY AS RECEIVED

LA THÈSE A ÉTÉ MICROFILMÉE TELLE QUE NOUS L'AVONS REÇUE

NL-339 (r.86/06)

Canada

THE UNIVERSITY OF ALBERTA

NATIVE PARTICIPATION IN PUBLIC POLICY MAKING AND THE ADVANCEMENT OF NATIVE INTERESTS IN NORTHERN CANADA: A Case Study of the Porcupine Caribou Management Board

by

Beverly K. THERRIEN

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH

IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE

OF Master of Arts

Department of Political Science

EDMONTON, ALBERTA

Spring 1987

Permission has been granted to the National Library of Canada to microfilm this thesis and to lend or sell copies of the film.

The author (copyright owner) has reserved other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without his/her written permission.

L'autorisation a été accordée à la Bibliothèque nationale du Canada de microfilmer cette thèse et de prêter ou de vendre des exemplaires du film.

L'auteur (titulaire du droit d'auteur) se réserve les autres droits de publication; ni la thèse ni de longs extraits de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation écrite.

ISBN 0-315-37721-6

THE UNIVERSITY OF ALBERTA

RELEASE FORM

NAME OF AUTHOR Beverly K. THERRIEN

TITLE OF THESIS NATIVE PARTICIPATION IN PUBLIC POLICY MAKING AND THE ADVANCEMENT OF NATIVE INTERESTS IN NORTHERN CANADA: A Case Study of the Porcupine Caribou Management Board

DEGREE FOR WHICH THESIS WAS PRESENTED Master of Arts

YEAR THIS DEGREE GRANTED Spring 1987

Permission is hereby granted to THE UNIVERSITY OF ALBERTA LIBRARY to reproduce single copies of this thesis and to lend or sell such copies for private, scholarly or scientific research purposes only.

The author reserves other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without the author's written permission.

(SIGNED) .....

PERMANENT ADDRESS:

9120 - 152A Avenue

EDMONTON, ALBERTA

T5E 5W1

DATED 8 April 1987

THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled NATIVE PARTICIPATION IN PUBLIC POLICY MAKING AND THE ADVANCEMENT OF NATIVE INTERESTS IN NORTHERN CANADA: A Case Study of the Porcupine Caribou Management Board submitted by Beverly K. THERRIEN in partial fulfilment of the requirements for the degree of Master of Arts.

Gurston Dacks

Supervisor

M. Brown

A. B. Pocklington

Date 8 April 1987

BLANK PAGE INSERTED

to my grandparents, Elizabeth Geschwendt and the late Joseph Therrien

and

to my parents, Edward Therrien and Melita Therrien

ABSTRACT

This thesis looks briefly at two systems of wildlife management, scientific management, the predominant system of management closely associated with government, and indigenous management. A third, alternative systems of management, joint management, is then examined. In particular, attention is paid to the extent to which indigenous management is incorporated into joint management. Using the Porcupine Caribou Management Board, PCMB, as a case study an assessment of: the ability of native people to participate in public policy making, the ability of native people to advance native interests through membership on a joint management board; and the responsiveness of such a board to native concerns is offered. There is also a consideration of both the ability of the PCMB to balance indigenous and scientific elements in a management regime and the danger of co-optation implicit in any subordination of the indigenous system to the scientific system. The terms of the Porcupine Caribou Management Agreement, PCMA, and the technical resources available to the PCMB to meet its objectives are also examined. During the period under study the PCMB had only two regular meetings so, by necessity, this thesis offers only a preliminary assessment of the potential of the PCMB with a consideration of the issues before the PCMB.

ACKNOWLEDGEMENTS

I would like to thank all the members of the Porcupine Caribou Management Board, PCMB. The Board members gave generously of their time to a stranger in agreeing to speak with me on a subject that is very important to them. Their cooperation was vital to the completion of this thesis.

I wish to thank the Boreal Institute Grant-In-Aid for Northern Research programme. The financial support I received from both the Boreal Alberta Research Grant and the DINA Northern Science Training Grant administered under the Grant-In-Aid programme made it possible for me to interview the members of the PCMB and to attend two of the PCMB meetings held in Dawson City, Yukon and Aklavik, Northwest Territories. As well, I would like to thank Mrs. Cooke and the staff of the Boreal Library for their assistance in keeping me abreast of developments related to this thesis through the clipping service they provide grantees.

I would also like to recognize the financial support I received from the Alberta Heritage Scholarship Programme. As a recipient of the Pope John Paul II Commemorative Scholarship (for native studies) I was able to devote myself to my studies. Further, the staff of the Heritage Scholarship office was consistently helpful and patient in answering my many enquiries over two years of study.

Finally, I would like to thank my advisor, Dr. G. Dacks, for his patient guidance throughout the researching and writing of this thesis.

ABBREVIATIONS

B & K Agreement - Beverly-Kaminuriak Barren Ground Caribou Agreement

B & K Board - Beverly-Kaminuriak Caribou Management Board

B & K Herds - Beverly and Kaminuriak Barren Ground Caribou Herds

DIAND - Department of Indian Affairs and Northern Development

GNWT - Government of the Northwest Territories

NWT - Northwest Territories

PCH - Porcupine Caribou Herd

PCMA - Porcupine Caribou Management Agreement

PCMB - Porcupine Caribou Management Board

YTG - Yukon Territorial Government

Table of Contents

Chapter		Page
1.	INTRODUCTION AND THEORETICAL CONSIDERATIONS	1
	1.1 Introduction	1
	1.2 Theoretical Considerations	4
	1.2.1 Renewable Resources as a Common Property Resource	4
	1.2.2 Paradigms in Resource Management and Native Attitudes	5
	1.2.3 A Third System for Wildlife Management: Joint Management	15
	1.2.4 Jurisdictional Concerns	19
	1.3 Joint Management, Devolution and Native Claims	25
2.	BACKGROUND	28
	2.1 The Porcupine Caribou Herd	28
	2.2 Influential Events in the United States	31
	2.3 Developments in Canada	31
3.	ANALYSIS OF THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT	40
	3.1 The Agreement	40
	3.2 Technical Resources	44
	3.3 New Terms	47
	3.4 Other Significant Sections of the PCMA	50
4.	THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT AND NATIVE PARTICIPATION	54
	4.1 Native Participation and Joint Management	54
	4.2 The Responsiveness of the Porcupine Caribou Management Board	55
	4.3 Native Participation	61
5.	COMPARISON OF THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT AND THE BEVERLY-KAMINURIAK BARREN GROUND CARIBOU AGREEMENT	64
6.	NEGOTIATIONS TOWARDS AN INTERNATIONAL AGREEMENT	71
7.	CONCLUSION	78
	7.1 The Agenda of the Porcupine Caribou Management Board	80

7.2 A Preliminary Assessment of the Potential of the Porcupine Caribou Management Board 84

BIBLIOGRAPHY 89

APPENDIX A 94

APPENDIX B 95

APPENDIX C 105

List of Figures

Figure — Page

7.1 Range of the Porcupine Caribou Herd in the Yukon and Northwest Territories 103

7.2 Harvesting Areas for the Porcupine Caribou Herd 104

1. INTRODUCTION AND THEORETICAL CONSIDERATIONS

1.1 Introduction

This thesis seeks to assess the ability of Canadian native people to participate in public policy making as a way of advancing native interests. Having stated this broad intention it is necessary to establish some limits so this assessment can offer some insights. The focus of this thesis will be on the Canadian North which includes both the Yukon and Northwest Territories. Assessments will be confined to the ability of native people to participate in public policy making as it relates to renewable resource management, particulary wildlife. In developing this thesis, attention will be paid to the relationship of native people to wildlife. The notion of renewable resource development will be discussed along with the idea of balanced development as it relates to non-renewable resource development. As well, there will be discussion of existing and potential wildlife management systems. A case study will be used to provide a focus.

The Canadian North is in a period of rapid evolution. Since the 1970s the North has experienced the boom of megaproject developments and the bust when such projects fell victim to dramatic decreases in world energy and mineral prices. In coping with economic fluctuations the North has searched for a form of government which will act in the interests of all Northerners and allow them to participate in government rather than having Northern interests ignored because of national interests and the imposition of policies emanating from Ottawa. The relative immaturity of the North in political terms along with the keen interest of many Northerners in the North's political development means that there is great potential for innovative public policy.

Historically the native people of the North have relied on hunting, fishing and trapping for their economic well-being. Renewable resource harvesting formed the basis of the native economy. Today harvesting continues to provide ". . . substantial quantities of fur and food." [1] as well as perpetuating the social relationships necessary to the traditional native life.

[1]Gurston Dacks, CHOICE OF FUTURES (Toronto: Methuen, 1981), p.173.

In other words, renewable resource harvesting is important for cultural as well as economic reasons. Given the vagaries of the non-renewable resource economy, which is heavily based on hydrocarbons, attention in the North has turned increasingly toward a consideration of how renewable resources can be developed in order to provide the North with a more stable economic base. Non-renewable resource development has not been abandoned, rather the need for balanced development has been recognized so the situation does not arise where one resource is sacrificed for the sake of developing another one, creating a dependency on, for instance, oil.

More specifically, renewable resources are seen as forming the basis for the local economy in a " . . . continuation and adaptation of a lifestyle that has supported Native people in the North for thousands of years."[2] The wildlife resources of the North have been singled out for attention which has resulted in an examination of existing wildlife management systems and their rationales. The desire of native people to participate in making those decisions which affect them has lead them to scrutinize existing management systems. Native people have found these systems lacking.

The importance that native people place on continued access to wildlife resources can be seen in the fact that provisions for safeguarding harvesting rights, with attention paid to the maintenance of wildlife resources, are found in all land claim submissions. The government's acceptance of aboriginal harvesting rights from the start has enabled native people to assert themselves in the area of wildlife management - unlike other areas where the existence of aboriginal rights or native interest has been viewed as a contentious item by government. [3]

Government's adoption of a scientific system of management has, in effect, squeezed out the indigenous system of management. Because government has been in the position of

---

[2]Nick Sibbeston, "Keynote Address: Economic Development and Renewable Resources in the Northwest Territories," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, The 1986 Symposium of the Alberta Society of Professional Biologists (Edmonton, Alberta: n.p., 29 April-1 May 1986), p.154.

[3]DIAND, LIVING TREATIES: LASTING AGREEMENTS, Report of the Task Force to Review Comprehensive Claims Policy (Ottawa: Supply and Services, 1985), p.54.

power and control in the North scientific management became the accepted way to manage wildlife. Scientific management displaced indigenous systems of management and went on to question the credibility of indigenous systems because of their lack of the quantitive data so necessary to decison-making under scientific management.

Gradually there has been a change in political climate. Government now accepts that the existence of an indigenous management system is possible and that scientific management is not the only way to manage wildlife. Work undertaken by native people and sympathetic southerners since the mid 1970s has enabled native people to demonstrate the existence of the indigenous system. This body of work, along with the politicization of native people and native demands for self-government has brought forth serious questions for scientific management to answer.

At first the indigneous system was put forth as the management systems to replace scientific management. Later it was acknowledged that the indigenous system is also prone to breakdowns, resulting in overharvesting of wildlife just as the inaccuracy of data has lead to management errors under the scientific system. Joint management was developed as an alternative system of management where both government and native people are able to represent their interests and concerns while bringing to light information from scientific studies and the experience of native harvesters. For joint management to become a reality requires government to encourage native people to participate in wildlife management and to bring with them their knowledge of the indigenous system. Thus far joint management has called for indigenous knowledge to be applied to the purposes of the scientific system. Indigenous knowledge is required to adapt to the scientific system and not vice versa. The onus is on government to incorporate indigenous knowledge in a wildlife management system because up until now government has been in the driver's seat as the sponsor of the scientific system. Native people must also make sure to participate if they have any intentions of advancing native interests through such things as wildlife management boards.

Currently there are only two joint wildlife management boards in existence in the North, both concerned with the management of a migratory species, the barren ground

caribou. They are the Beverly and Kaminuriak Caribou Management Board, the B & K Board and the Porcupine Caribou Management Board, PCMB. The PCMB is the case study used here with some references to the experiences of the B & K Board.

1.2 Theoretical Considerations

1.2.1 Renewable Resources as a Common Property Resource

For the most part Canada's renewable resources are common property resources. Under the economic theory of common property resources, resources are exploited by individuals under the impetus of profit maximization. The aim of users of common property resources is to capture the economic rent from a common property resource before somebody else does.[4] This theory of common property resource exploitation, under the condition of individualistic competition, assumes there are unlimited natural resources. This idea that nature's bounty is inexhaustible resulted in Canadian government policy calling for the full exploitation of natural resources. "After the war [World War II], the major national concern was how could Canada's vast resources be developed so as to create employment for returning soldiers and avert the anticipated economic depression."[5]

The value of renewable resources has generally been measured in a strictly quantitative manner using cost/benefit ratios. This means a decision NOT to exploit a profitable resource costs the decison-maker. Under this theory of resource exploitation there is no incentive to conserve as the unused resource is wasted, or the benefits accrue to the person who does exploit the resource (thus making the resource his/her private property). The social benefits derived from a renewable resource are not considered here as these benefits are difficult to quantify. Historically it has been the cash value these resources could be exchanged for which

---

[4]Scott H. Gordon, "The Economic Theory of a Common Property Resource: The Fishery," JOURNAL OF POLITICAL ECONOMY, vol. LXII (February-December 1954), pp. 124-142. See also Garrett Hardin, "The Tragedy of the Commons," SCIENCE, 1243-1242 13 December, 1968).
[5]Ralph R. Kruegar and Bruce Mitchell, eds., MANAGING CANADA'S RENEWABLE RESOURCES (Toronto: Methuen, 1977), p.3.

has been used to demonstrate their worth. It is only through work done in the last ten years that a strong case has been made for considering the value of social benefits (which are largely non-quantifiable) derived from renewable resources. Slowly the idea that

> [r]enewable resources which cannot be easily be given a commercial value may be of overriding importance to community well-being or individual sense of worth, and the realization of such nonmonetary wealth may have little to do with the consumption of the resources or the management of them as property[6]

has gained acceptance and a certain amount of credibility as a legitimate consideration by policy makers.

1.2.2 Paradigms in Resource Management and Native Attitudes

A paradigm of resource management which is based on the common property theory of resources is biological-scientific resource management. Common property assumes resources are infinite while scientific management accepts resources as finite. Both theories assume that human behaviour is the same in that people are not natural conservers and will seek to maximize personal benefit from a resource by exploiting it. Scientific management was developed when it was realized that renewable resources could become depleted. Decison-makers agreed that resources needed to be managed so that people could continue to benefit from them. In order to fulfill this management function for wildlife scientific resource managment requires an account of stocks, an estimation of total allowable catch, comparison of total annual harvest with presumed sustainable yields, evaluation of management problems and a consideration of other complicating factors.[7] In summary, a thorough understanding of the life-history and biology of species, which relies heavily on quantitative data, is a prerequisite to good scientific managment. Thus common property theory and scientific managment also share a reliance on quantitative data. Given scientific management's need of quantitative data in order to develop a management regime it seems unlikely that it can

---

[6]E.F. Root, "The Northern Dilemma," in M.M.R. Freeman, ed., PROCEEDINGS: FIRST INTERNATIONAL SYMPOSIUM ON RENEWABLE RESOURCES AND THE ECONOMY OF THE NORTH (Banff, Alberta: Association of Canadian Universities for Northern Studies, May 1981), p.7.

[7]Fikret Berkes, "Fisheries of the James Bay Area and Northern Quebec: A Case Study in Resource Management," in Freeman, PROCEEDINGS, p.157.

develop an appropriate management regime for Northern species as ". . . scientists have only fragmentary biological information for nearly all arctic species that they propose to scientifically manage." [8] The paucity of data led one zoologist to write that

> [w]here the data lend themselves to statistical analyses at all, confidence limits are so wide as to render the estimates virtually useless for management purposes. . . . When the uncertainties of inventory are combined with inadequacies in harvest statistics, it is impossible to say with any confidence whether or not any stock is being overharvested by man.[9]

When adequate data are available they tend to be species-specific. This means research and data collection has been undertaken only in relation to a single species and tends to exclude work leading to an understanding of a particular species within an ecosystem. Further, the data that are available concentrate on things like the number of animals in a herd, the sex ratios and the number of calves born. Factors that do not lend themselves to easy quantification, such as the animals appear restless, are not emphasized. The result has been a fierce belief in the 'magic of numbers' where ". . . failure to use quantitative methods reduces the utility and credibility of the approach taken." [10]

Scientific management has been identified as the 'state system of managment' by Peter Usher.

> The state manages for certain levels of abundance on a technical basis, and then allocated shares of this abundance to users on an economic and political basis. The system is based on a scientific accumulation, organization, and interpretation of data, and management problems are resolved in a technical, ahistorical framework. The system of management is bureaucratic, which is to say, hierachically organized and vertically compartmentalized, centralized and flows from the top down. The environment is reduced to conceptually discrete separate management units managed separately. As these separate management units take on a life of their own, management objectives diverge and become focused on specialized objectives: maximizing fur production, trophy product or recreational expenditures. Not least, the managment of fish and wildlife resources become separated from the management of the lands and waters that sustain them.[11]

---

[8]M.M.R. Freeman, "Appeal to Tradition: Different Perspectives on Arctic Wildlife Management," in Jens Brosted, et al, NATIVE POWER (Oslo, Norway: Universitetsforlaget As, 1985), p.268.
[9]W. A. Fuller, "Of Conservation and Mysticism, Democracy and Things," ARCTIC, vol.32, no.3 (September 1979), p.181.
[10]Freeman, "Appeal to Traditions," in Brosted, NATIVE POWER, p.266.
[11]Peter J. Usher, "Keynote Address: Devolution of Power in the Northwest Territories: Implications for Wildlife," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.71.

The modern Canadian state has adopted as its own the biological-scientific system of resource managment making it the state system of wildlife management.

Fikret Berkes also recognizes scientific management.[12] Berkes' discussion of this system differs slightly from Usher's discussion in that he focusses on the regulations promulgated by government on the basis of scientific studies as the identifiable characteristic of this system which he calls the 'regulation system'. In the regulation system government plays a pivotal role in management by its support of the use of scientific studies in the development of public policy dealing with wildlife management. This usually results in limits being placed on levels of wildlife harvests. Berkes points out that this adoption by government of scientific management has lead to the formulation and implementation of regulations which generally act upon the harvester (hunter).

Theoretically under scientific managment a conservation regime would be fairly straightforward. It would involve control over the activities of resource harvesters. The allocation of rights to harvest a resource would be the contentious item, making allocation a political matter. [13] However, given the general lack of confidence in the accuracy of scientific data for Northern species and the identification of a second possible system of renewable resource management the type of conservation regime to be implemented becomes a variable as well. Writers concerned with wildlife management have identified this second management system as ~~the native or in~~digenous management system.[14]

---

[12]Fikret Berkes, "The Role of Self-Regulation in Living Resource Management in the North," in Freeman, PROCEEDINGS, pp.166-178.
[13]Berkes, "Fisheries," in Freeman, PROCEEDINGS, p.158.
[14]see Berkes, "The Role of Self-Regulation," in Freeman, PROCEEDINGS; Harvey A. Feit, "Political Articulation of Hunters to the State," INUIT STUDIES, vol.3, no.2 (1979), pp.37-42; Freeman, "Appeal to Tradition," in Brosted, NATIVE POWER, pp.265-281; Peter J. Usher, "Property Right: The Basis of Wildlife Management," in Canadian Arctic Resources Committee, NATIONAL AND REGIONAL INTERESTS IN THE NORTH, 3rd National Workshop on People and Resources and the Enviroment North of 60o (Yellowkife, NWT: CARC, 1-3 June 1983), pp.389-416.

The indigenous system is based on a body of knowledge involving the behaviour of wildlife resources. It is not quantitative in the way of scientific management and does not apply the assumptions of the theory of common property. In the indigenous system native people

> . . . assess the deviations from the norm in a qualitative sense: e.g. animals become fewer, or fatter, or more excited, there are fewer calves in the herd, more injured bulls, more barren cows, etc. etc. All such information provides important evidence of trends taking place in the status of the population.[15]

Once again Peter Usher provides a summary of what the indigenous system comprises,

> . . . all members of the group are involved with management as well as with harvesting, but leadership and authority within the group are based on the greatest acquisition of knowledge and the demonstrated ability to use it effectively. As well, significant management data include not only immediate observations of direct cause and effect, but also accumulated historical experience and a long-range conception of the future. The indigenous system of management is a core feature of all northern Native cultures, and is therefore intimately linked with their values, ethics and cosmology, which are generally based on an integrated, noncompartmentalized view of the environment.[16]

For Berkes the identifiable characteristic of this system is its lack of formal regulations and regulatory regimes. This is in direct contrast to what Berkes identified in the regulatory system. In the 'deregulation system' all management powers are delegated to the local community. Berkes' deregulation system is basically Usher's indigenous system. [17]

Indigenous management is not 'unscientific'. Indeed, it requires the careful and systematic study and observation of any true science. Indigenous management is not the antithesis of scientific management, rather the term 'scientific management' reflects conventional usage and is a term of convenience. However, there is an unfortunate tendency to idealize the indigenous system as pure and ideal. Usher recognizes this and so concludes his overview of the indigenous system with a cautionary note, ". . . it seems only fair to add that those of the indigenous system are not immune to error or fallacy either."[18]

---

[15]Freeman, "Appeal to Tradition," in Brosted, NATIVE POWER, p.275.
[16]Usher, "Keynote Address," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.71.
[17]Berkes, "The Role of Self-Regulation," in Freeman, PROCEEDINGS, p.166.
[18]Ibid, p.71.

The lack of exchange between the two systems of management, scientific and indigenous, to the situation where they generally operate ". . . if not in opposition, at least in ignorance of each other, with the welfare of the northern wildlife and fish populations upon which traditional users remain dependent, almost wholely the responsibility of scientific-based management." [19] Because scientific managment developed in isolation from the indigenous system its premises were not based on a full understanding of the relationship between native harvesters and renewable resources. Scientific managment assumed that increasing native harvesters' access to technology would result in overhunting as the introduction of technology removes ". . . the natural limits on hunting . . . The native hunter must, therefore, as soon as he acquires this modern technology, be regulated in his activities, for his own good as well as that of others."[20] The scientific system has seen itself as a bulwark, preventing native hunters from abusing wildlife resources through overhunting, in other words regulating the hunter, not the resource with the implicit assumption that native culture is 'primitive' and incapable of self-regulation. Modern society, which is intimitely linked with scientific management, saw any culture based on hunting as a primitive one, clearly below modern industrial society in evolutionary terms. Indeed, in the Baker Lake trial of 1979 where the Inuit of Baker Lake sought to stop mining activities because of adverse effects on hunting, an editorial was written clearly expressing this view,

> . . . 'it is unthinkable that development should be stopped in order to preserve such a rudimentary way of life as to require hunting for one's next meal. Surely, we have all progressed beyond that, especially in Canada. All too often we have the southern do-gooders and environmentalists wanting to keep these people in their basic life style as a sort of quaint museum piece rather than encouraging them to become part of the 20th century.'[21]

Resentment of this characterization of their culture provoked strong responses by fledgling native organizations formed in the 1970s. A growing awareness by native people of the potential impact of non-renewable resource development led to the formation of native organizations such as the Dene Nation, Inuit Tapirisat of Canada, ITC, the Committee for

---

[19]Freeman, "Appeal to Tradition", in Brosted, NATIVE POWER, 1985, p.265.
[20]Peter J. Usher, "Sustenance or Recreation? The Future of Native Wildlife Harvesting in Northern Canada," in Freeman, PROCEEDINGS, p.57.
[21]THE NORTHERN MINER, 16 August 1979 as found in Robert Page, NORTHERN Development (Toronto: Methuen, 1986),pp.246-7.

Original Peoples' Entitlement, COPE, and the Council for Yukon Indians, CYI. The threat presented by the possibility of a pipeline running through the Mackenzie Valley alarmed native people who felt the continued existence of their way of life, heavily based on a subsistence economy, was incompatible with the construction of a pipeline.

> Learning from the southern native experience the Inuit and Dene were profoundly worried that the pipeline would be the beginning of the end for their traditional social structure based on the experience of hunting and trapping, for without this relationship to the land, the values could not be perpetuated by each new generation and their culture would die off.[22]

This perceived threat provided native organizations with a compelling reason to articulate and document the existence and continued viability of their subsistence economy and the vital role of this economy in perpetuating their traditional way of life. In doing so native organizations sought to show that this way of life was neither a museum piece nor inferior to modern industrial society. The burden of proof rested with native people supported by sympathetic southerners. In making these claims native organizations knew that the federal government, the major actor in Northern politics, and the territorial assemblies supported non-renewable resource development. Indeed, the federal government had declared publicly that non-renewable reource development was in the national interest because it would contribute to Canada's economic well-being and Canadian security (security of supply).

As part of this process of articulation and documentation the existence of an indigenous system of wildlife management had to be established, contradicting some of the premises of scientific managment which denied its existence. Once this was done there was a polarization. On one side there was the indigenous system as identified by native people and a few sympathetic southerners, on the other side was the scientific system supported by government and southern scientists. The Dene Nation, the most militant of the newly formed native organizations, saw the situation as one of 'us against them',

> We [the Dene] know from our past experiences that government research by white researchers has never improved our lives. Usually white researchers spy on us, the things we do, how we do them, when we do them, and so on. After all these things are written in their jargon, they go away and neither they nor their reports are ever seen again. [23]

---

[22]Page, NORTHERN DEVELOPMENT, p.59.
[23]Phoebe Nahanni, "The Mapping Project," in Mel Watkins, ed., DENE NATION:

Vestiges of this resentment still exist because of the methods used by white or southern researchers. These researchers have been called ". . . six week wonders that come to the Northwest Territories amongst the Indian and Inuit people and decide how it is they should live and what they are doing wrong. We [native people] take them for a joke!"[24]

Since the 1970s much work has been done by anthropologists to counter the suppositions of the scientific system and its view of traditional native life as primitive and unregulated. In particular, work has been done to gain a better understanding of the subsistence economy of traditional native societies,to demonstrate the existence of an indigenous system of wildlife management and to show that hunting represents more than just a cultural legacy for native people.

The economic and nutritional value of hunting has been demonstrated. In work done in one Northern community it was estimated that ". . . one-third of the total food requirements for humans and animals were met through country food production: an amount that saved the community approximately $200,000,". [25] However,focussing on the economic and nutritional importance of hunting ignores the non-quantifiable aspects of hunting. Hunting represents more than sustenance, it plays an important role in the social relations of native people. The point is that traditional native life presents a legitimate and viable alternative to modern industrial life, it is not a cultural dinosaur.

In its ideal form traditional native life is based on a subsistence economy which operates on a self-limiting principle enforced by customary law. Thus, the ". . . magnitude of the harvest is simply keyed to needs."[26] Because levels of harvest are keyed to needs the 'successful' or 'good' hunter is one who is ". . . able to harvests what he needs, not necessarily someone who harvests a great deal." [27] In order to harvest in this fashion

---

[23](cont'd) THE COLONY WITHIN (Toronto: University of Toronto Press, 1977),p.23.
[24]Jim Bourque, "The Trapper's Viewpoint," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.226.
[25]Michael Asch, HOME AND NATIVE LAND (Toronto: Methuen, 1984), p.18. See also Scott Rushforth, "Country Food," in Watkins, DENE NATION, pp.32-46.
[26]Berkes, "The Role of Self-Regulation," in Freeman, PROCEEDINGS, p.169.
[27]Ibid, p.169.

knowledge is important and the type of knowlege that is needed is only available through the interactions of native society. Subsistence activities thus

> . . . require special skills and a complex understanding of the local environment that enables the people to live directly from the land. It also involves cultural values and attitudes: mutual respect, sharing, resourcefulness, and an understanding that is both conscious and mystical of the intricate interrelationships that link humans, animal and the environment. . . . Subsistence patterns follow a seasonal cycle of harvestable resources and young hunters learn slowly through countless generations. They accompany experienced hunters to learn by personal observations all they can about local geography, weather, animal behaviour, traditional techniques of travelling, hunting, and living on the land, and how to process and preserve the products they harvest. [28]

Subsistence activities do not represent a static sort of lifestyle. Native people have been criticized for claiming to follow a traditional lifestyle while making use of modern technology but as anthropologists point out

> [t]he ability to sustain such a significant level of country food production is based largely on the use of Western technology such as the rifle, the skidoo and the steel trap. It is therefore ironic that many people consider the adoption of such items as symbolizing the abandonment of native traditions. Often, given the contemporary situation, it is only through the use of this frequently expensive technology that native people are able to pursue their traditional land-based subsistence activities.[29]

At the Environmental Assessment and Review Panel, EARP, hearings on Beaufort Sea development it was acknowledged that a traditional lifestyle does not mean stagnation, or an avoidance of modern technology. "Income from other sources [part time or seasonal employment] contributed to improving the standard of living and making life more comfortable: view the use of skidoos, boats with outboard motors, trucks, and aircraft as common substitutes for travel by foot and dog team."[30]

Native people engaged in traditional activities have expectations much the same as those in the wage economy. Innovations which make their lives more comfortable and agreeable while still allowing them to pursue their preferred activities are accepted and

---

[28]Thomas Berger, VILLAGE JOURNEY: THE REPORT OF THE ALASKAN NATIVE REVIEW COMMISSION (New York: Hill and Wang, 1985), pp.51-2.
[29]Asch, HOME AND NATIVE LAND, p.18.
[30]Dome Petroleum Ltd. and Esso Resources Canada Ltd., BEAUFORT SEA-MACKENZIE DELTA ENVIROMENTAL IMPACT STATEMENT, vol.5, SocioEconomic Effects (n.p.: 1982), p.5.11. See also Robert B. Weeden, "Northern People, Northern Resources, and the Dynamics of Carrying Capacity," ARCTIC, vol.38, no.2 (June 1985), p.116-8.

incorporated into the traditional lifestyle.

> They want to foster the development of their native languages and customs, including in some cases the revival of ancient religious and customary practices. They want to ensure that their children will be brought up in their native languages and in such a way as to keep their native identities. But at the same time they want the benefits of the modern age for their people: good education, health, housing and other public services. It must be understood that they want powers not only to protect native identities, but also to enable them to act to improve society and other public services on reserves and among aboriginal peoples generally.[31]

In summary the subsistence economy and the wage economy are not antagonistic. Rather, participation in the wage economy allows native harvesters to subsidize their expense, which are mostly capital, in the subsistence economy. The two economies are therefore mutually reinforcing.

Berkes, in his work on the Cree Indians of eastern James Bay in Northern Quebec has shown that subsistence usage of renewable resources occurs under a set of conditions where ". . . there is social regulation of access, the resource is communally shared under mutual agreed rules, not merely viewed as common property."[32] Berkes does not suggest that native people are natural conservers. Instead he demonstrates that renewable resource management is a common sense matter, and that self-interest dictates that the native community, as a whole, benefits where ". . . good resource use practices develop over time among peoples who are dependent on a particular resource."[33] Berkes' approach is to show that ". . . land is important not because it is a piece of real estate, but because it supports living resources that provide sustenance."[34] It makes good sense for native people to be concerned about the management of resources which are important to their way of life. This explains native interest in renewable resource management in economic terms. Their interest is even more compelling in terms of the role hunting plays in producing a number of social relations and interactions that are identified with a traditional lifestyle that is seen as part and parcel of a subsistence economy. ". . . [M]any of the values involved in the Arctic resource conflicts are difficult or impossible to represent in the utilitarian terms required to give them exchange

---

[31]David A. Boisvert, FORMS OF ABORIGINAL SELF-GOVERNMENT (Kingston: Institute of Intergovernmental Relations, Queen's University, 1985), p.57.
[32]Berkes, "The Role of Self-Regulation," in Freeman, PROCEEDINGS, p.177.
[33]Ibid., p.173.
[34]Ibid., p.172.

value in market transactions." [35] Wildlife management then, ". . . must meet several public policy objectives which cannot be maximized simultaneously: these include legal or human rights, economic efficiency, social and economic equity, as well as conservation." [36]

The confrontational nature of encounters between native people and scientific managers (for the most part employed by government) was very evident during the late 1970s into the early 1980s. Such confrontation can, today, be seen as a result of a lack of understanding by scientists of the native subsistence economy as well as the defensive posture of native people who saw that when they shared information with scientists it was used against them, for instance delimiting hunting. There has been

> . . . a dissatisfaction with their [native people's] involvement in research and the application of its results; a mistrust of providing information to scientists, lest the information provided should be used to formulate or implement policies that go against what the Native people believe to be their best interests or those of the resources involved; a lack of confidence in some of the techniques used by biologists. [37]

A crisis in confidence was created by a lack of communication and exchange between native people and scientific managagers. The rationale for many scientific management policies escaped native people. Such policies were seen as being imposed from outside for no good reasons,

> . . . the experience of local people may have little or no influence upon the technical/scientific approach to knowledge or its use, and conversely the scientific basis for management is an alien approach in the eyes of some users. Furthermore, there seems to be no mandate or recognition that it is important to bring these varied knowledge bases to bear on a common problem.[38]

In terms of resource development it is important to remember that native people are not anti-development. Rather they are for controlled non-renewable resource development where there is a balance between non-renewable and renewable resources. Native people, for

---

[35]Oran Young and Gail Osherenko, "Arctic Resource Conflicts: Sources and Solutions," in William D. Westermeyer and Kurt M. Shusterich, eds., U.S. ARCTIC INTERESTS: THE 1980s AND 1990's (New York: Springer-Verlag, 1984), p.205.
[36]Usher, "Keynote Address," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.69.
[37]Paul F. Wilkinson, "Some Thoughts Towards A Policy for the Rational Use of Renewable Resources in the Canadian North," in Freeman, PROCEEDINGS, p.76.
[38]John K. Naysmith, "Planning for the Future: Management", in Freeman, PROCEEDINGS, p.229.

most part, are not advocating a return to the 'good old days'. Modern technology, in the form of rifles, skidoos and outboard motors, has improved their lives and been incorporated into the tradtional lifestyle.

> The survival of native societies and cultures does not mean that they will not change, nor that non-renewable resource development will not occur. It does presuppose a new political will based on the plausibility of creating balanced developments, on ideological justifications for such an outcome, and on effective legal and administrative levers to produce such an outcome.[39]

What is sought is balanced development, where the effects of non-renewable resource development on renewable resources are considered. "Native people in the Northwest Territories have clearly shown that they favour a conservative and cautious approach to the development of non-renewable resources like oil and gas. Some of the strongest submissions to review processes like EARP (Enviromental Assessment and Review Process) have come from those whose livelihood is threatened."[40]

The fact that the North has felt the impacts of the boom and bust cycles of the non-renewable resource market has made Northerners reluctant to rely on non-renewable resources and megaprojects as their economic base. "In this context the renewable resource sector becomes an important area for building a stable and diversified economic base."[41]

1.2.3 A Third System for Wildlife Management: Joint Management

The two management systems identified by Usher and Berkes represent a dichotomy. They are either/or approaches and exclusionary in the sense that there is no intermingling of the two potential management groups. A third system for wildlife management attempts to draw together these two systems. This management system is known by a variety of names, for example: integrated management, co-management, co-operative management, participatory management, shared management and joint management. Whatever name is

---

[39]Harvey A. Feit, "Conflict Arenas in the Management of Renewable Resources in the Canadian North: Perspectives Based on Conflicts and Responses in the James Bay Region, Quebec," in CARC, NATIONAL AND REGIONAL INTERESTS, p.455.
[40]Jim Bourque, "Observations from the Trapline," NATIVE PEOPLE AND RENEWABLE RESOURCES, p.39.
[41]Sibbeston, "Keynote Address," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, pp.153-4.

used such a system aims at involving all those groups which have an interest in the good management of a renewable resource, ensuring that the interests of these groups are taken into account in the formulation and implementation of any management policies. Such a system recognizes there are overlapping interests with different priorities and that a mechanism is needed to reconcile these.[42] Joint management seeks to overcome ". . . animosities and distrust between managers and the users and hence poor management of wildlife."[43] This means that southern trained biologists who accept northern positions must see that ". . . traditional native management of wildlife was [not] merely based on the fact that their hunting technology was so crude that they were unable to over-exploit their environment."[44] By the same token another southern myth needs to be exposed, that is that all natives are extremely competent hunters. "Many children, however, don't have the interest or the opportunity to travel and hunt because of the southern schooling system and other pervading influences of the non-native populations in the north and are not gaining the skills of a hunter."[45] Reports of wasteful hunting practices by young hunters who have not been brought up in the traditional system are difficult to deal with because of strategic political concerns. There is a reluctance to give up, in any way, aboriginal rights to hunt before a settlement of land claims. However, awareness of the problem has prompted native communities to apply peer pressure to the offenders to prevent any recurrences.

> A couple of years ago a large herd of caribou walked into the community of Baker Lake. The young men in town who seldom hunt, went on a shooting spree and killed a couple of thousand animals. The Renewable Resources Officers realized the difficulty of attempting to press charges. Instead, they rounded up the wasted carcasses and piled them in the centre of town. Once the townspeople became aware of the magnitude of wastage, the elders, Hunters and Trappers Association (HTA) and Hamlet Council applied pressure to the youth to prevent the incident from recurring.[46]

---

[42]J.E. Chamberlin, "Gathering and Governing: Renewable Resources and The Economy of the North," in Freeman, PROCEEDINGS, p.180.
[43]R. Riewe and L. Gamble, "The Inuit and Wildlife Management Today," paper presented at the Boreal Institute for Northern Studies Conference, KNOWING THE NORTH: INTEGRATING TRADITION TECHNOLOGY AND SCIENCE, at the workshop on Wildlife and Native People: Traditional and Contemporary Ecological Knowledge, Edmonton, Alberta, 20-22 November 1986, p.2.
[44]Ibid, p.2.
[45]Ibid, p.3.
[46]Ibid, pp.9-10.

One of the anticipated benefits of joint management is the development of a system wherein harvesting and management of a renewable resource are compatible with the conservation of that resource. Given that present systems of wildlife management are scientific systems, then moves towards joint management requires focussing attention on ways to involve native users in all phases of wildlife management including research and monitoring activities. "This would enable managers to benefit from the users' extensive knowledge of local environmental issues, and would assure users of their specific perceptions and needs being addressed by the studies undertaken."[47] Joint management means joint control.[48]

Local management or decentralization is intimately associated with joint management, it is seen as an integral part of joint management. Once the logic of joint management is accepted the notion of delegating management responsibilities to the local community represents a reasonable progression. Local management is seen as yet another way of including as many users as possible as active managers of the resource. Delegation of management activities is seen as enhancing communication and the understanding of the aims of a management regime with understanding leading to acceptance and compliance with any necessary conservation practices. For example, the local community could be delegated the responsibility of assigning harvest quotas to each area,

> they could determine the use and disposition of the harvest. Within the quota allocation local harvesters could consume or sell their catch or assign the right to hunt or fish to others, as they pleased. Whether local communities or groups would maintain their licences on a group basis, or allocate them to individual members, could again be their decision.[49]

The very nature of the resources of the North demands a management system which is self-enforcing in the sense that those people the systems seeks to regulate understand and support management policies.The vastness of the North along with its sparse and scattered population makes enforcement of unpopular policies difficult, if not impossible for a limited number of Renewable Resources Officers. Policies which are seen to benefit harvesters are far more likely to get the desired response from harvesters who are primarily native.

---

[47]CARC, NATIONAL AND REGIONAL INTERESTS, p.386.
[48]Government of Canada, INDIAN SELF-GOVERNMENT, Report of the Special Committee, 1st Session, 32nd Parliament, (12 and 20 October 1983), p.65.
[49]CARC, NATIONAL AND REGIONAL INTERESTS, p.413.

An example of voluntary compliance and support is found in the case of polar bears on Northeast Baffin Island. A combination of data analysis, community consultation and confirmation of original research results suggested polar bears were being overharvested. Through a process of community consultation local hunters agreed to reduce their harvest quotas despite the fact that this decision meant economic hardship to them in an already depressed economy.[50] This management decision was only possible through the participation of the harvesters in the decision-making process.

One area of joint management that requires special attention is that of encouraging native people to participate in scientific studies. The experience of Alaska can be drawn upon here as it is similar to that of the Canadian North. In Alaska it was found that levels of education expected for renewable resource jobs often exceed those found in the native community. Modifications in hiring procedures ". . . permit greater flexibility in recruiting and hiring local and Native candidates for example, the Division [of Subsistence in the Alaskan State Government] was able to have a bilingual preference attached to certain technician positions and to have subsistence experience count as relevant work experience."[51] The impetus to get native participation in research is twofold. First, and as discussed earlier, participation is likely to lead to understanding and thus compliance with management policies. Secondly, while research may require scientific expertise ". . . data from scientific sampling projects is only one source of the available information available on local effects. The people themselves are often the most effective monitors because they are present at all times."[52]

The existence of wildlife management boards which seek their rationale in a system of management called joint management is indicative of development, where

> [d]evelopment means replacing these conditions [unsatisfactory ones] with some new forms of life which a majority of the people find acceptable in terms of generally

---

[50]Kevin Lloyd, "Co-operative Management of Polar Bears on Northeast Baffin Island," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, pp.108-116.

[51]Steven R. Behnke and Terry L. Haynes, "Local and Native Hire in Renewable Resource Management: An Alaskan Case," in NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.147.

[52]Robert R. Everitt, "Native Roles in Monitoring Energy Developments," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.47.

> shared values. The sum of all these management improvements from what was to what ought to be, could be comprised by the terms "modernization". [53]

Joint management is thus public policy which seeks to recognize the interests of all its constituents. It is innovative public policy developed in response to a perceived inadequacy in existing policy. It has been accepted because of the feeling that existing policy did not address and was not responsive to user concerns.

1.2.4 Jurisdictional Concerns

Joint management is complicated when it seeks to manage a migratory resource, such as caribou, which crosses jurisdictional boundaries. In this case it is no longer a matter of dealing with one government and a specific native organization. It becomes a matter of dealing with governments representing different jurisdictions and native organizations representing the interests of different user communities.

In very general terms the Yukon and the Northwest Territories have jurisdiction over wildlife, but the federal government has specific interests which complicate matters.

> The federal government is responsible for marine mammals, fish, migratory birds, and all wildlife in national parks. The territorial government is responsible for all terrestrial mammals. With respect to habitat, however, the federal government is responsible for practically all lands and waters in the Northwest Territories.[54]

On the face of it it appears that the two territories under their respective Game and Wildlife Ordinances have jurisdiction over wildlife but, as pointed out, their jurisdiction is subject to a number of exigencies not to mention the possibility of change in jurisdiction due to devolution.

Theoretically the Department of Indian Affairs and Northern Development, DIAND, is the lead federal department in the North. Its ability to impose order and contend with its own divided and often contradictory mandate of acting as an advocate for natives and promoting northern development is modest "[b]ecause DIAND's legitimacy is continually

---

[53]Nils Orvik, NORTHERN DEVELOPMENT: NORTHERN SECURITY (Kingston, Ontario: Centre for International Relations, Queen's University, 1983), p.10

[54]Peter J. Usher, THE DEVOLUTION OF WILDLIFE MANAGEMENT AND THE PROSPECTS FOR WILDLIFE CONSERVATION IN THE NORTHWEST TERRITORIES (Ottawa: CARC, July 1986), p.89.

being challenged it tends to measure its success by the absence of controversies, which it knows are always just around the corner."[55]

Other departments with an interest include: the Department of Finance, supportive of northern energy exploration because of government revenue benefits; Department of Energy Mines and Resources,EMR, promoting non-renewable resource exploration and development; Department of Industry, Trade and Commerce and Department of Regional and Industrial Expansion, DRIE, supporting energy development in the hope of industrial benefits and spin-offs; External Affairs, in terms of sovereignty; Defense in respect to NORAD commitments and in military functions related to sovereignty; Transport Canada and the Coast Guard for example, in relation to the Class VIII icebreaker for use in the Arctic; Department of Fisheries and Oceans, DFO, concerned with the resources of the Arctic Ocean; and the Department of Environment, DOE, with its enviromental concerns.[56] In short, DIAND is not the only federal department with a mandate in the North. A major problem is that these departments operate according to a variety of policies.

> The plurality of northern policy documents exacerbates already formidable difficulties inherent in cooperation among the numerous departments and agencies with divergent mandates, widely different levels of funding and frequently, directly competing objectives. The product of this situation is a persistent policy vacuum, in which important issues may be ignored or be tardily confronted in a haphazard mixture of interpersonal and interdepartmental struggle, accident and contingency.[57]

The case of plans to develop Stokes Point in the Yukon in order to expedite non renewable resource development in the Beaufort Sea highlights DIAND's problems in reconciling its mandate and the lack of coordination amongst federal departments.

In 1982, DIAND, as the exclusive authority to issue land-use permits in the Yukon,decided to consider seriously Gulf Canada Resources' application for permission to

---

[55]Peter Burnet, "Enviromental Perspectives in the 1980s," in Michael Whittington, coordinator, THE NORTH (Toronto: University of Toronto Press, 1985), p.137.
[56]Dacks, CHOICE OF FUTURES, pp.198-199. See also Page, NORTHERN DEVELOPMENT, p.315.
[57]Frances Abele and Edgar Dosman, "Interdepartmental Coordination and Northern Development," CANADIAN PUBLIC ADMINISTRATION, vol.24, no.3 (fall 1981), p.434. See also DIAND, LIVING TREATIES: LASTING AGREEMENTS: Report of the Task Force to Review Comprehensive Claims Policy (Ottawa: Supply and Services, 1985), p.87 and Burnet, "Environmental Perspectives," in Whittington, THE NORTH, p.137.

begin developing an offshore marine drilling site in the Beaufort, preferably at Stokes Point. This decision was made despite the fact that the granting of such an application would violate the agreement-in-principle DIAND had recently signed with COPE. As the evidence accumulated indicating DIAND was looking at the Gulf application other federal departments felt compelled to register disapproval. For example "[s]harp letters passed from senior levels of DOE to DIAND, indicating a strong hostility to DIAND's deliberation of Gulf's request."[58] It is difficult to assess whether the eventual lack of development of Stokes Point in 1983 was the result of an awareness on the part of the federal governmnent that permission would strike a serious blow to its credibility in regard to native claims or a result of the continuing decline in world oil prices and the financial constraints this placed on the activities of companies such as Gulf.

1985 and 1986 saw the release of two reports, the Penner Report and the Coolican Report, examining native people's relationship to the federal government. Both reports have a common theme, that is the need to transfer responsibility for the adminstration of programs to the people affected by those programs, specifically native people, from the federal government. As well, both reports say that native people must be consulted in discussions on issues which may affect them, for example, non-renewable resource development. The Penner Report singled out DIAND for its inconsistencies in policy, "We [the members of the Commission] found that departmental managers did not have a common interpretation of the Department's role. The absence in unanimity was most evident in the stance that managers believed the Department should take regarding the demands of native people."[59] The Penner Report concluded that the inconsistencies in DIAND could not be dealt with and recommended the gradual phasing out of the department. In contrast the Coolican Report holds out hope that DIAND can be reformed so as to function effectively. Indeed, it envisages a lead role for DIAND in co-ordinating the other federal departments with interests in the North.[60]

---

[58]NORTHERN PERSPECTIVES, vol.11, no.2, March-April 1983, p.2.
[59]Government of Canada, INDIAN SELF-GOVERNMENT, p.82.
[60]DIAND, LIVING TREATIES, p.87.

The examination of the role of the federal government in regard to the claims process by these two federally appointed committees takes as a given that the federal government must develop a position that is approved by all departments. As well, both reports state that the federal government needs a strong commitment to resolve native claims. Their views have served to put pressure on the federal government to participate in the claims process in a constructive and creative manner.[61] The federal government has supported the Coolican recommendation that a ". . . new policy should not require aboriginal people to surrender totally rights that our Constitution has so recently recognized and affirmed. We [the Coolican committee] therefore recommend that blanket extinguishment of aboriginal rights no longer be a pre-condition for settlement."[62] Toward the goal of aboriginal economic self-sufficiency, which is part of native claims, the Coolican Report advocates joint management,

> . . . land without the power to manage what happens on it, or the right to fish without a say in the management of fish stocks, will only perpetuate the dependency of aboriginal peoples. . . . We [the Committee] recommend a new policy based upon a relationship of sharing of power and resources. . . .To be prepared to give up jurisdiction and to change its own decision making structures is one of the most difficult challenges for any institution the size of the Government of Canada.[63]

Since the 1970s the two territorial governments have been undergoing a process of political development. The chief characteristic of this development has been a desire to get the federal government to transfer to the territorial governments the power to make decisions on economic and political matters which directly affect Northerners. At the time when non-renewable resources were booming these territorial assemblies were dominated by non-native northerners, representing a generally pro-development bias. The politicization of native people and their decision to participate in the territorial assemblies resulted in many changes, particularly in the innovative proposals put forth for northern political development. Native peoples' expectations of the political system have resulted in innovative public policy, policy which has deviated from accepted southern Canadian standards in order to

---

[61]DIAND, LIVING TREATIES, p.88.
[62]Ibid, p.iii.
[63]Ibid, pp.iii-iv.

accommodate unique Northern concerns. A change in the tone and style of the territorial governments is easily discerned in the recent history of both the NWT and the Yukon.

The election of the NWT's Ninth Legislative Assembly in 1979 with a majority of native members served to make the Government of the Northwest Territories, GNWT, aware of the expense to renewable resources of non-renewable resource development. As well "[t]his election marked the end of the boycott of the Assembly by the Dene Nation, the most politically assertive native group in the NWT. The Dene had spurned the Eighth Assembly calling it a colonial body."[64] Native participation in the Assembly served to make the GNWT aware of and responsive to native concerns, tempering the GNWT's pro-development bias. As a result the GNWT, in 1980, issued a position paper in support of native claims,

> [t]his policy was implemented almost immediately when the Assembly actively supported the Dene in arguing that a proposed expansion of production at the Imperial Oil field at Norman Wells and construction of a pipeline in the Mackenzie Valley be delayed until after the native claims in the Valley are settled.[65]

More recently, at a conference on Native People and Renewable Resource Management the GNWT's then Government Leader, Nick Sibbeston stated clearly the GNWT's position is that renewable resource development should be encouraged and protected.

> My Government [the GNWT] has developed and implemented policies on renewable resource use and compensation that, on the one hand, encourage the domestic and commercial uses of renewable resources with defined management goals and, on the other hand, require developers of resource development projects to determine possible impacts on renewable resources and prepare detailed compensation plans for the users of those resources before proceeding with development.[66]

The GNWT is aware that renewable resources are not valued in economic terms alone, but also for their social and cultural value.[67]

The Yukon Territorial Government, YTG, with the release of its discussion paper on THE FUTURE OF THE YUKON'S RENEWABLE RESOURCES (December 1985) asserts much the same thing as the GNWT in terms of the desirability of balanced resource

---

[64]Dacks, CHOICE OF FUTURES, pp.99-100.
[65]Dacks, CHOICE OF FUTURES, p.100.
[66]Nick Sibbestion, "Keynote Address: Economic Development and Renewable Resources," NATIVE PEOPLE AND RENEWABLE RESOURCES, p.156.
[67]Ibid, p.157.

development. The paper supports the idea of joint management too. It is acknowledged that conflicts do exist as to the appropriate use of various resources. The hope is that a ". . . co-operative approach to planning resource use in each area will help resolve many of the problems." [68] The paper also make it clear that renewable resources are seen as an important part of the Yukon's economy, and that the YTG intends to ". . . establish renewable resources as a developing and stable part of the Yukon economy . . .". [69]

For the YTG this represents quite a change in tone and attitude from the 1970s and early 1980s when non-renewable resource development proposals were given precedence over renewable resources. Non-renewable resources had been seen as the basis of the Yukon economy, providing work opportunities. Renewable resources were sacrificed toward this end. An example of the YTG's former position on non-renewable resource development can be found in the Stokes Point proposal. Stokes Point has been recognized internationally as being enviromentally significant.

> It [Stokes Point] is the calving grounds for the Porcupine caribou herd and supports large concentrations of marine mammals, particularly seals and bowhead and white whales. A large and varied bird population migrates, moults, and stages along the Yukon coastal plain. Moreover, the North Slope includes the traditional hunting grounds of the Inuvialuit, the Dene of the north Mackenzie valley, and the Indians of Old Crow.[70]

The YTG focussed on ". . . pursuing employment, training and business opportunities for Yukoners who wish to participate in Beaufort hydrocarbon activities," [71] ignoring the environmental significance of the area and the potential damage to renewable resources from non-renewable resource development activities.

---

[68]Department of Renewable Resource, Yukon Territorial Government, THE FUTURE OF THE YUKON'S RENEWABLE RESOURCES, December 1985, p.1.
[69]Ibid, p.1.
[70]NORTHERN PERSPECTIVES, vol.11, no.2, March-April 1983, p.1.
[71]Yukon Territorial Government, "Government of the Yukon Position on Beaufort Development Proposals," CARC, NATIONAL AND REGIONAL INTERESTS, p.657.

1.3 Joint Management, Devolution and Native Claims

Insofar as devolution could further complicate the acceptance and implementation of joint management regimes it needs to be considered. Oftentimes devolution is tied to the idea of native self-government. In the North devolution means the granting of authority or powers to Northerners to take an active role in making those decisions which affect them rather than having decisions imposed on them by a distant federal government in Ottawa. The stated intent of devolution is to provide more effective government by bringing government closer to the people it affects and to encourage the self-reliance of the people being governed by allowing them to gain experience in government by playing an active role in decision making. Devolution can be seen as taking place at two levels. At one level it concerns the transfer of powers from the federal government to the territorial government. At a second level (and closely tied to native self-government) devolution concerns decentralization, a delegation of powers to local governments in the communities on matters that are local in nature. In the North the aim is that devolution will include in the future control over land and resources. In many instances devolution is considered synonymous with self-determination as it contributes to change in the North that ". . . maximize[s] the ability of northerners to govern their own lives."[72]

The close connection and potential overlap between native claims and devolution as pursued by the territorial governments has been acknowledged by the GNWT. For the GNWT devolution is defined as ". . . the transfer or delegation of provincial-type powers held by the federal government to the Government of the NWT."[73] Recognition of common concerns in claims and devolution led to the linking of these two concerns with the GNWT stating that devolution would only proceed where it did not prejudice claims. As a result of this overlap the GNWT signed a Memorandum of Understanding, MOU, with the Dene/Metis Association of the NWT.

Under the Memorandum of Understanding, where it has been determined that a

[72]Gurston Dacks, "The Case Against Dividing the Northwest Territories," CANADIAN PUBLIC POLICY, vol.XII (March 1986), p.207.
[73]GNWT sessional paper,"Political and Constitutional Development in the NWT," revised, June 10, 1986, p.7.

> subject for devolution involves an aboriginal right being negotiated through the claims process, the GNWT is further committed to signing "participation agreements" which determine the type and extent of involvement of aboriginal organizations in devolution negotations.[74]

In its renewable resource discussion exercise the YTG made certain that it indicated

> [t]he Yukon government is committed to achieving a fair settlement of land claims with the aboriginal people of the Yukon. A land claims settlement will result in a wide range of rights for the Yukon's native people in land, water and wildlife management.[75]

Within the same paper the YTG pledged to increase the involvement of native people in joint management programs as additional management responsibilities are transferred from the federal government to the YTG.[76] The YTG has not signed any MOUs with Yukon native groups but it has stated an intent to take a cooperative approach considering all interests when resolving conflicts over resource use.

In terms of native claims and the Porcupine Caribou Management Agreement, PCMA, both territorial government representatives on the PCMB saw the signing of the COPE Agreement as influencing negotiations which lead to the signing of the PCMA. A decision by native groups to link the PCMA to claims helped speed up the signing of the Agreement.[77]

Joint management appears to have the support of the YTG as a cooperative method to resolve conflicts. The GNWT sees joint management as a concern of native claims and something which warrants the involvement of interested parties. Joint management, in that it seeks to provide effective management through a cooperative process that considers the interests of all parties, is entirely compatible with the idea of devolution. The federal government is also able to ensure that its voice is heard because joint management considers the interests of all parties. Thus the federal government is able to maintain a presence in the North in regard to renewable resource management while also acceding to the requests of the

---

[74]GNWT, sessional paper, p.12.
[75]Department of Renewable Resources, YTG, THE FUTURE, p.1.
[76]Ibid, p.1.
[77]Interviews with members of the PCMB, Dawson City, Yukon, 28-30 August 1986. One of the YTG representatives on the PCMB went further and suggested that the change in government in the Yukon from Progressive Conservative to New Democrat was not as important to the PCMA as the decision to link the PCMA to land claims.

territories for the transfer of power and authority to Northerners. Native groups are satisfied with joint management as it allows them to participate in the decision making process. Finally, the structure and representative nature of joint management allows for the articulation of non-native interests too.

2. BACKGROUND

2.1 The Porcupine Caribou Herd

The range of the Porcupine Caribou Herd, PCH, is vast crossing international boundaries. The herd's migration route includes the area commonly referred to as the North Slope in Alaska and the Yukon, an area commonly described as a 'unique heritage area'. It also includes " . . . the ecologically sensitive coastal lowlands of the MacKenzie Delta . . ." [78] in the Northwest Territories, NWT. The barren ground caribou found in Northern Canada has been described as the ". . . greatest renewable resource, an irreplaceable asset because of the prohibitive cost of meats imported from the south."[79] Indeed, "[a]rcheological evidence indicates that natives have killed caribou at the crossing points of the Porcupine River for at least 30,000 years."[80] While some of the historical uses of the caribou, such as sinew for thread and tallow for fuel in stove lamps, have been replaced by modern technology ". . . for many areas the caribou remains the most important source of protein, especially for the difficult winter months."[81]

As for the animals themselves their mass migration has been described as one of the most moving spectacles on earth.[82] While admiring this spectacle biologists have had to admit that

> [n]o-one knows what makes caribou choose one winter range in a particular winter and another one the next. [For instance] the caribou may be absent from the Dempster area for several years and then suddenly turn up by the thousands.[83]

Only sketchy scientific data is available on the PCH, mostly in terms of caribou numbers, sex and age proportions. [84] In testimony given at the Berger Inquiry George Calef, a noted

---

[78]NORTHERN PERPECTIVES, vol.VII, no.7, 1979, p.3.
[79]Page, NORTHERN DEVELOPMENT, p.191.
[80]SCIENCE, 179 (1973), pp.335-340 as found in Page, NORTHERN DEVELOPMENT, p.186.
[81]Page, NORTHERN DEVELOPMENT, p. 191.
[82]George Calef, CARIBOU AND THE BARREN-LANDS (Ottawa: 1981),p.15.
[83]George Calef, JOURNEY: THE DEMPSTER HIGHWAY (Whitehorse, Yukon: Yukon Conservation Society, 1984), p.16.
[84]D.C. Thomas, "At the Crossroads of Caribou Management in Northern Canada" (Ottawa: Canadian Nature Federation, 1981), p.17.

caribou biologist, indicated that what is not known about the PCH is more significant than what is known.[85] Further, there are questions about the reliability of this data as studies have been conducted on a sporadic rather than continuous basis, often dependent on a particular government department's funding for the year and that department's list of research priorities. This approach to research tends to lead to crisis management, studies being undertaken in a rigorous manner only when there is a perceived or impending crisis.

Biologists engaged in debates about the causes for decreases in herd size offer a variety of explanations. For instance, Calef felt that man and wolves were the major reasons for decreases in herd size. Non-renewable resource development was seen as only having a minor effect and therefore there should be 'relatively few restrictions' placed on it.[86] Others state that because the level of biological understanding is low

> . . . it is possible to identify several critical factors affecting caribou,[but] the interaction among such factors and their effects on herd populations, birth and death ratios, and migration patterns are not at all clear.[87]

For instance, biologists do not know the effects on the PCH of the development of transportation routes necessary to non-renewable resource exploration and development. "[C]aribou highway interaction studies have been insufficient to understand fully the impact that highway and related activities have on the animals."[88] The only area where biologists have reached a consensus has been in identifying the calving grounds of the PCH, the coastal plain adjacent to the Beaufort Sea, as an area of critical importance because of the combination of particular environmental factors found there.[89]

At both the August and November 1986 meetings of the Porcupine Caribou Management Board, PCMB, it was clear that there is a lack of accurate data on the PCH. The author of THE STATUS AND LIFE HISTORY OF THE PORCUPINE CARIBOU HERD[90]

---

[85]as quoted in Lorraine Allison, "Caribou: Management of a Vital Resource," in Robert F. Keith and Janet B. Wright eds., NORTHERN TRANSITIONS (Ottawa: CARC, 1978), p.218.
[86]Calef, CARIBOU, p.168.
[87]Allison, "Caribou" in NORTHERN TRANSITIONS, p.210.
[88]Nancy Russell Leblond, PORCUPINE CARIBOU HERD (Ottawa: CARC, 1979), p.65. See also Page, NORTHERN DEVELOPMENT, pp.190-191.
[89]see Page NORTHERN DEVELOPMENT, p.185.
[90]Doug Urquhart, THE STATUS AND LIFE HISTORY OF THE PORCUPINE

(written in 1983 and updated in 1986) acknowledged that the data in it were very crude and the methodology used to determine the PCH's population was questionable."[91] After a general discussion the PCMB decided ". . . to consider the herd as 100,000 adults until further studies definitely showed otherwise."[92] While the numbers and methodology of population studies were disputed at least some data were available. In contrast, the lack of harvest data on the PCH and the fact that a program to collect harvest data only began in 1984 was described by a senior biologist as " . . . the biggest weakness in the Yukon wildlife programme . . .[He went on to say that] good data were essential for wildlife management and Land Claims negotiations."[93]

Prior to the formation of the PCMB, biologists had been getting together on an informal basis to attempt to coordinate field work done on the PCH. This group, which included biologists from the Yukon Territorial Government, YTG, the Government of the Northwest Territories, GNWT, Canadian Wildlife Services, CWS, United States Fish and Wildlife Services and the Alaskan Department of Fish and Game, had been trying to meet once a year to discuss work on the PCH on a technical level. Without the benefit of any broad management direction they lacked focus and so studies had not been consistent. Further, this group was not equipped to deal with political problems, such as decisions taken to develop non-renewable resources to the detriment of renewable resources, such as caribou. This group was restricted to a consideration of technical-biological problems. The formation of the PCMB represents a significant decision by government to manage the PCH for conservation purposes obliging government to consider how its other policies can affect this renewable resource.

While there is uncertainty about specifics of the PCH it is generally seen as healthy and growing. This places government in the ideal position of being able to formulate a long range plan to ensure the future health of the PCH, something which is greatly desired by the

---

[90](cont'd) CARIBOU HERD, 2nd draft, Yukon Department of Renewable Resources, 1986.
[91]minutes, PCMB meeting, Dawson City, Yukon, 28-30 August 1986, p. 6
[92]Ibid, p. 6
[93]Ibid, p. 8.

herd's major harvesters, the native people of the Yukon, the NWT and Alaska. Government has an opportunity to act in a positive manner rather than being forced to react to a crisis situation later on.

The remainder of this chapter will look at the history leading up to the signing of the Canadian Porcupine Caribou Management Agreement, PCMA. In particular, this chapter will look briefly at the influence of events in the United States on Canada and concentrate on developments in Canada.

2.2 Influential Events in the United States

Beginning in the 1920s, following a trend of conservationism[94] in the United States, proposals were put forth advocating the creation of an Arctic National Wildlife Range, ANWR, to protect a unique segment of the Arctic. A number of discussions took place over the years and finally in 1960 the American Secretary of the Interior, Fred A. Seaton, established the ANWR by Public Land Order (2214). This order withdrew 8.9 million acres

> . . . for the preservation of its unique wildlife, wilderness and recreational values . . . The result was withdrawal of the lands from all forms of appropriation under the public land laws, including the mineral laws, but not the mineral leasing laws nor the Disposal of Material Act of July 31, 1947. This means that mining or prospecting for locatable high value minerals such as gold, silver, lead, zinc, etc. is prohibited. Disposal of low surface material such as sand and gravel, while permissable by law, cannot be allowed without significant conflict with Range objectives.
>
> The Range is open to mineral leasing laws. Before oil and gas leasing can be permitted, however, the classification procedure set forth in Title 43 of the United States Code of Federal Regulations must be accomplished. . . . The Range has never been formally classified.[95]

Within the ANWR lies a portion of the PCH range.

2.3 Developments in Canada

Canadian Wildlife Services, CWS, (which is a part of the Department of Environment) followed the development of the proposal for the American ANWR and forwarded a management plan to the Department of Indian and Northern Affairs, DINA,

---

[94] as expressed, for example by the Sierra Club

[95] John D. Findley, "History and Status of the Arctic National Wildlife Range," UBC LAW REVIEW, vol.6, no.1, supplement, June 1971, p. 16.

> . . . for portions of the northern Yukon contiguous with the proposed wildlife range in Alaska. Although this plan was accepted within the then department of Indian Affairs and Northern Development it was finally rejected by the Yukon Territorial Council. In the absence of visible public concern for a Yukon reserve the federal government let the matter quietly die.[96]

So, at the time of the 1968 Prudhoe Bay discovery of oil and gas in the area of Alaska's North Slope and subsequent increase in exploration activity in Canada in the Beaufort Sea and Mackenzie delta area there was no protection in place for the Beaufort and the delta which would limit such activity or insist on safeguards. At the best of times northern ecosystems are considered to be in a delicate balance, sensitive to disruptions of any sort. As mentioned earlier the coastal plain adjacent to the Beaufort Sea is a major calving ground for the PCH. The reproductive potential of the herd is limited to begin with as caribou require three to four years to mature and then only produce one calf a year. The stress of pregnancy and calving is already high so any disturbance to the herd's habitat will increase mortality."[97] Oil and gas development activity in the area disturbs the PCH at a critical time in its life cycle. Indeed, the Beaufort Environmental Assessment and Review Panel, BEARP, identified caribou as one of the species most likely to be affected by development."[98] Subsequent discoveries of oil and gas and accompanying development activity raised concerns over the possibility of oil and gas development adversely affecting renewable resources, and thus, traditional native activities such as hunting.

The dramatic upsurge in development activity increased the fear of detrimental effects on the environment as well. In response to these fears a conference was held in Whitehorse in 1970 and the Arctic International Range Society was formed. The Society's first order of business was to lobby for the establishment of a Canadian equivalent to the American

---

[96]NORTHERN PERSPECTIVES, vol.VII, no.7, 1979, p. 2. The Yukon did not want to encourage any action on the part of the federal government in the Yukon until ". . .the issue of provincehood was settled." NORTHERN PERSPECTIVES, 1979, p.3. As well, the Yukon was decidedly pro-development and did not want development stymied through the creation of such a range.

[97]Page, NORTHERN DEVELOPMENT, p.184.

[98]Dome Petroleum Ltd., et al, BEAUFORT SEA-MACKENZIE DELTA ENVIRONMENTAL IMPACT STATEMENT, vol.4, Biological and Physical Effects (n.p., 1982), p.3.44.

ANWR. A proposal was submitted to DINA and endorsed by Jean Chretien, then Minister of Indian and Northern Affairs. As well, James Smith, the Commissioner of the Yukon endorsed the proposal which called for multiple use of the Range in cases where non-renewable resource development activities could be carried on without damage to renewable resources, such as the PCH. But, the timing of the proposal was inauspicious. Escalation of oil and gas prices along with the public's and government's perception of an impending energy crisis saw Ottawa declare that hydrocarbon development was in the national interest despite its potentially ruinous effects on renewable resources. Ottawa's position was supported and encouraged by powerful petroleum groups wishing to increase exploration in the Canadian North for valuable hydrocarbon finds. Native people, at that time, were not organized to defend their interests hence they were unable to articulate the vital role played by renewable resources in both a subsistence and mixed economy. The proposal for a Canadian Arctic Wildlife Range was set aside once again.

A scheme to bring natural gas from Prudhoe Bay down the Mackenzie Valley in the NWT precipitated the Berger Inquiry (1974-77). The Inquiry brought the issues connected with the Canadian Arctic Wildlife Range proposal under public scrutiny once again. Public reaction to Berger created a political climate favourable to the "[p]rotection of at least some of the natural splendours and the opportunity for continued pursuit of traditional activities by native peoples . . .[these were now deemed] at least as important as the immediate exploitation of depleting resources."[99] Berger also provided native people with a forum for expressing their concerns about the effects of non-renewable resource development on wildlife. Berger's popularity made it impossible for Ottawa to pursue non-renewable resource development much to the chagrin of Jean Chretien, then Minister of Indian and Northern Affairs. According to Chretien "Berger's mandate was to tell us [the federal government] how to build the pipeline. Instead he told us not to build it."[100]

---

[99]NORTHERN PERSPECTIVES, vol.VII, no.7, 1979, p. 2.
[100]Jean Chretien, STRAIGHT FROM THE HEART (Toronto: McClelland and Stewart-Bantam Ltd., 1985), p.62.

Berger identified the area proposed for the Canadian Arctic Wildlife Range as the appropriate area for a wilderness park which would also allow traditional usage of the land by native people. In 1978 Ottawa reacted to Berger by:

1. withdrawing 9.6 million acres in the northern Yukon from further development as an interim measure;
2. setting up a task force ". . . to develop a management plan for the PCH and the Canadian portion of its range, and to co-ordinate various working groups on northern land-use planning and management."[101] CWS was delegated the authority to begin discussions for an international convention for the joint management of the PCH between Canada and the United States; and
3. the signing of an agreement in principle with the Committee for Original Peoples Entitlement, COPE, which specified that " . . . at least 500 square mile of the Yukon's North Slope would be set aside for a National Wilderness Park." [102]

Land was withdrawn, a working group was created and in 1984 COPE signed the Inuvialuit Final Agreement [103] which has provisions for recognizing the future establishment of a National Wilderness Park by Ottawa.[104] However, no management plan for the PCH was developed ". . . because of the Yukon government's unwillingness to participate." in developing such a plan.[105]

The change in government in the Yukon in 1985 from Progressive Conservative to New Democrat created a more favourable climate for negotiations on such an agreement. In 1985 the Yukon Territorial Government, through its Department of Renewable Resources, expressed renewed interest in pursuing a Canadian Porcupine Caribou Management

[101]NORTHERN PERSPECTIVES, vol.VII, no.7, 1979, p.3.
[102]NORTHERN PERSPECITIVES, vol.VII, no.7, 1979, p.3.
[103]DIAND, THE WESTERN ARCTIC CLAIM: THE INUVIALUIT FINAL AGREEMENT (Ottawa: Supply and Services, 1984).
[104]It is interesting to note that in the spring of 1984 the Yukon Territorial Government said they would not participate in a Porcupine Caribou Management Board until the COPE land claim was resolved. CARIBOU NEWS, vol.3, no.6, April 1984.
[105]J.A. Keith, "A Canadian Perspective on an Agreement with the United States on Migratory Caribou," INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE ASSOCIATIONS, (n.p., 1979/80), pp.16-20.

Agreement. Contributing to this more favourable climate was the evolution of thought with regard to land claims.

Within all these claims are clauses which indicate a desire, on the part of native people, to participate in wildlife management. Through the overall land claims process the ideal of shared or joint management in regard to wildlife management slowly took hold until it has become accepted as the sensible way to proceed; involving people in managing the resource when they are that resource's principle users.

In other ways land claim negotiations have both helped and hindered the development of a joint management board for the PCH. As claims have gained legitimacy the notion of joint management found in claims has become accepted. Progress in claim negotiations has created a favourable climate for joint management proposals and led to advances. Claims have also hindered the development of a joint management board because of the complicated land claims process. The PCH is a shared migratory resource of interest to the CYI, Council of Yukon Indians, IGC, Inuvialuit Game Council, (formed as a result of the signing of the INUVIALUIT FINAL AGREEMENT) and the Dene Nation and the Metis Association of the NWT. [106] During negotiations for the Porcupine Caribou Management Agreement the fact that these three groups represent separate and confidential claims made it difficult to discuss the PCH as a shared resource. Further, any agreement had to be acceptable to all three claims and the governments involved. The governments party to the Agreement realized this and in 1983 a meeting was held to discuss the common interest of the user communities and government in coordinating management of the PCH throughout its Canadian range outside of the claims process.[107] Prior to this time the unwillingness of the YTG to negotiate its position on several key points had led the GNWT to wonder if the YTG was serious about negotiations.[108] In these renewed negotiations the YTG became the initiator, softening its

---

[106]All of these groups are signatories to the Porcupine Caribou Management Agreement. Hereinafter the Dene Nation and the Metis Association of the NWT will be referred to as the Dene/Metis as these two organizations are considered as one of of the signatories to the PCMA.

[107]from the files of the GNWT, Department of Renewable Resources, October 1983.

[108]Interview with member of the PCMB,Dawson City, Yukon, August, 1986.

position considerably on three outstanding points from previous negotiations. These points were, essentially, differences in positions between the YTG and all the other negotiating parties; the GNWT, Ottawa, CYI, IGC, and the Dene/Metis.

First, the YTG accepted that only the first chairman of the PCMB had to be a Yukoner after that the decision would be left to the PCMB. Second, the YTG agreed to recognize the preferential subsistence needs of native people but got, in return, a guarantee of access for non-native Yukon hunters. Finally, it was agreed that within the PCMA there would be explicit reference to compliance to legislated controls for conservation, when required. This point was in reference to aboriginal people who can claim exemption from such controls under the provisions of the Indian Act.[109] Agreement by the YTG to these points represented a major change in attitude by the YTG. Further, they were all points that the other negotiating parties had come to agreement over already. The close link between some of the ideas expressed through these points and land claims negotiations certainly attributed to the YTG's earlier recalcitrance. Indeed, the idea of a preferential right to harvest for native people would never have been agreed to prior to the change in government in the Yukon in 1985. In a 1983 publication the YTG had stated that there should be no special rights for native people. [110]

Circumstances associated with the third point warrant a more detailed discussion. Here the events surrounding the formation of the Beverly and Kaminuriak Caribou Management Board, B & K Board, need to be reviewed for a better understanding.

The B & K Board came into being as the result of a perceived threatening decline in the population of the B & K herds. The situation became known as the 'caribou crisis' and made headlines in major southern newspapers. Acrimonious exchanges between government and native users took place in an attempt to assign blame for the condition of the herds.

Concern over the management of the B & K herds first started being voiced in the late 1970s manifesting itself in efforts to form a management board. Finally, in 1982 such a board

---

[109]from the files of the YTG, Department of Renewable Resources, 1985.
[110]Yukon Territorial Government, YUKON INDIAN LAND CLAIMS: A FAIR DEAL FOR YUKONERS?, March 1983

was formed with the signing of the BEVERLY-KAMINURIAK BARREN GROUND CARIBOU MANAGEMENT AGREEMENT.[111] While an agreement was reached antagonisms persisted particularly between native users and government biologists over assigning blame for the decline in the herds' condition.[112] Tension remained high as the media placed the blame squarely on the hunters, the vast majority of whom are native. The GLOBE AND MAIL quoted a biologist employed by the Saskatchewan Government as stating "'Overhunting is a major factor in the decline.'[the official then went on to] blame[s] a heavy kill among the Beverly herd by northern Saskatchwan Indians during the winter of 1979-80.'"[113]

The debate between wildlife biologists and native hunters over the accuracy of population data was reported in the pages of CARIBOU NEWS. Inuit hunters felt that harvest levels were actually down as there were fewer demands on the herd with the replacement of dogs with snowmobiles and "'. . . snowmobiles don't eat caribou.'"[114] Controversy raged over whether or not traditional native methods of conservation by hunters exist. In a letter to the editor of CARIBOU NEWS a wildlife biologist stated that primary users (native hunters) have no concept of resource management and that they lack responsibility. [115] Such exchanges pitted native hunters against wildlife biologists with government seen as supporting the biologists. Despite this situation both native people and biologists saw the value of establishing a board for the long term management of the herds and to ensure the continued existence of the herds leaving open the possibility of developing the resource in order to contribute to the economic wellbeing of its users.

In 1983 improvements and changes in survey methods saw the release of population statistics on the B & K herds where, "[b]asing their estimates on new survey techniques , biologists say that there may [sic] be twice as many caribou in the B & K herds as was previously thought."[116] Once again the purported 'caribou crisis' was discussed. A motion was

[111]DIAND, BEVERLY-KAMINURIAK BARREN GROUND CARIBOU MANAGEMENT AGREEMENT (Ottawa: Supply and Services, 1982).
[112]CARIBOU NEWS, vol.5, no.2, August 1985.
[113]GLOBE AND MAIL, 13 February 1984.
[114]CARIBOU NEWS vol.1, no.2, July 1981.
[115]CARIBOU NEWS, vol.1, no.4, December 1981.
[116]CARIBOU NEWS, vol.3, no.5, February 1984.

passed by the GNWT, which, since the election of the ninth assembly in 1979 has been sympathetic to native claims, reprimanding biologists for inaccurately reporting survey results which created the aura of a crisis and led to the maligning of users of the herd.[117] The argument was also advanced that this inaccuracy had affected the credibility of native users and their ability to negotiate for native participation in wildlife management at the same time as they were being accused of abusing the resource.[118]

Since that time the tensions between biologists and native users have eased. This can, in part, be attributed to the growing facility of native people in presenting their view on issues in southern forums. Further, demands for documentation to substantiate land claims have resulted in research being undertaken in order to determine whether or not there is such a thing as native conservation.[119] As well, biologists have come to see the importance of gaining the support of native people for their wildlife studies. Such support is now seen as a necessary prerequisite to the collection of accurate data and in securing the cooperation of users in accepting the results as legitimate and complying with conservation measures when they are deemed necessary. [120] This change in attitude on the part of biologists has allowed native people to accept the value of a formally institutionalized conservation regime. For both biologists and native people this has translated into a willingness to participate on a joint management board where scientific management and indigenous management will be used in developing a conservation regime. However, such a regime is likely to take the form of a regime based on the scientific system.

Returning to a consideration of the three outstanding points, once these points were resolved to the satisfaction of all parties the PCMA was signed. The YTG was sensitive to the need to be seen as reasonable in its demands during negotiations and in promptly ratifying the Agreement once negotiations were completed.

> Given past events and attitudes toward the government of the Yukon, the Yukon could not credibly raise further points to be negotiated in the Agreement. Non-ratification would seriously jeopardize the Yukon's credibility in at least the

[117]CARIBOU NEWS, vol.2, no.6, April 1983.
[118]CARIBOU NEWS, vol.3, no.5, February 1984.
[119]Feit, "Political Articulations," INUIT STUDIES, pp.37-52.
[120]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

renewable resource and environment management field.[121]

On 26 October 1985 the Canadian Porcupine Caribou Management Agreement, PCMA, was signed in Old Crow, Yukon, one of the PCH's principal user communities. The Agreement established the PCMB and its mandate.

[121]from the files of the YTG, Dept. of Renewable Resources, 1985.

3. ANALYSIS OF THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT

3.1 The Agreement

In general terms "[w]ildlife management is an institutional means for manipulating the elements and interactions between habitat, wildlife and man in order to achieve specific social goals and objectives." [122] On the face of it wildlife management appears to be a fairly straightforward proposition. Its goal, the manipulation of nature for the benefit of man has become part of the status quo of the twentieth century.

The major factor that is controllable in relation to the management of the PCH is human kill, more specifically, control of the wastage of caribou by humans through overkill. [123] Over the years native hunters were singled out for poor and wasteful hunting practices because they represent the majority of harvesters. The problem in relation to native hunters has been seen as finding a way to blend traditional skills with modern technology without abusing the resource, in this case caribou.[124] Native people have recognized the problem but a resolution has been hampered by political considerations. Hunting is an aboriginal right and court decisions have supported native rights to hunt without restrictions. " . . . [N]ative leaders are reluctant to give up these rights (hunting), especially prior to settlement of their land claims, . . .".[125] Wildlife management thus becomes a political matter. Politics becomes an important consideration when: the source of information on which management decisions are based is disputed, hence the decisons themselves are questioned; management boards are created but lack the resources to do an adequate job; there are questions about who participates in making management decisions; and when those people who are affected by decisions and whose compliance is necessary for regulations to take effect do not support these regulations. The relationship between wildlife management and native claims also acts to

[122]LeBlond, PORCUPINE CARIBOU, p.50.
[123]"Working Group Report," NORTHERN TRANSITIONS, p.213. Predator control, more specifically wolf control, is often discussed as a management tool, however the efficacy of this particular management tool is disputed because of the lack of knowledge of caribou-wolf interactions.
[124]Allison, "Caribou," in NORTHERN TRANSITIONS, p. 217.
[125]Page, NORTHERN DEVELOPMENTS, p.189.

politicize wildlife managment. Through native claims native people seek to gain control over matters which affect them rather than having decisions imposed on them by government, ". . . most of the native groups believe that they [illegible] take over at least some of the responsibilities of government that affect their integrity as a group and the viability of their culture."[126] In terms of political strategy native organizations see concessions by native people affecting their right to hunt as weakening their claims for a preferential right to harvest based on aboriginal rights as well as implying that native people are incapable of managing wildlife. Native organizations want to be strong in this area because ". . . [c]ontrol of game and game laws is considered essential to the development and maintenance of a traditionally based economy. [and c]ontrol of game management and a prior right to the use of harvestable surplus are vitally important to native people."[127]

Over the last couple of years the situation has changed. As native claims have gained the support of the territorial governments and the general public the political climate has changed so now native people are willing to apply peer pressure to those hunters guilty of bad hunting practices. Concern over the continued well-being of the PCH has seen native people enlisting the aid of territorial Renewable Resource Officers in the laying of charges for hunting offences. Joint management embodies a cooperative attitude. It is seen as being responsive to the concerns of native people. As well, it delegates to native people a role in the management of the resource thus cultivating a sense of responsibility for the continued good health of the resource, in this case caribou by fostering a a sense of stewardship which results in a willingness to comply with conservation measures unlike scientific mangement which is viewed by native people as an alien regime, imposed from outside. Finally, native participation on joint management boards such as the PCMB gives native people the potential to make those decisions which affect the lives of native people and assures government of a ongoing role in making management decisions which affect the well-being of an important resource.

---

[126]Dacks, CHOICE OF FUTURES, p.55.
[127]Allison, "Caribou," in NORTHERN TRANSITIONS, p.222.

The PCMB is a joint management board established under the terms of the PCMA. Its objectives include: ". . . manag[ing] the herd and its habitat to ensure its conservation, recogni[zing] and protect[ing] certain priority rights of native people to harvest Porcupine caribou, and acknowledg[ing] that others [non-native people] may share in harvesting." [128] To fulfill this objective the PCMB may make recommendations to ". . . ministers on any matter affecting the herd and its habitat relating to policy, legislation and regulation."[129] This broad mandate enables the PCMB to make recommendations on any aspect of caribou management. For instance, the development of a long range management plan is high on the PCMB's agenda.

In terms of composition the PCMB is made up of an equal number of government and native organization appointees in order to have a balance of interests. Each signatory of the PCMA appoints one Board member with the exception of the Yukon which appoints two members (s.C.3.(b)(i)).[130] The Minister is obligated to confirm Board nominations (s.C.3.(d)). This equality in representation also reflects a less combative posture on the part of native organizations who now see the possiblity of working in cooperation with government in particular areas.

The PCMA, in listing who is party to the Agreement, states that the Government of Canada is represented by the Minister of Indian Affairs and Northern Development, the Government of Yukon by the Minister of Renewable Resources and the Government of the Northwest Territories by the Minister of Renewable Resources. Thereafter ministerial responsibilities are laid out but which Minister, in specific, is responsible for carrying out particular obligations is never made clear. Most of the clauses calling for action on the part of a Minister only refer to a Minister, not Ministers. It would seem that the PCMB has one of two choices in forwarding Board recommendations. It can either forward all recommendations

---

[128]CARIBOU NEWS, vol.6, no.2, August 1986.
[129]CARIBOU NEWS, vol.5, no.4, December 1985.
[130]In appointing two members to the first PCMB the Yukon appointed one member from the government and one member from outside the government. Note: all citation of section numbers in this thesis are to the PCMA unless otherwise indicated.

to all three Ministers or decide which Minister, it feels is best suited to deal with a particular recommendation and forward the recommendation accordingly. This means that a particular Minister is not bound by the PCMA to undertake specific duties with regard to the PCMB. Instead it is up to the PCMB to determine which Minister is appropriate.

This lack of clarity in a legal document is disturbing. However, given that there is likely to be an ongoing process of devolution of powers to the territories from the federal government this lack of specificity appears more reasonable. As more powers are devolved to the territories it is possible that the question of which Minister is responsible for what matters may change. The PCMA, by avoiding any specific delegation of responsiblity avoids possible future confusion. However, there is some indication that the PCMB is intended to forward its recommendations and advice to all three Ministers (s.C.1.).

The PCMB itself forwards recommendations or advice based on a simple majority vote of its members, although it is stated that decision by consensus is desirable (s.G.(c)). The Chairman only votes in the case of a tie (s.G.(e)).

The PCMB can make recommendations and offer advice on a wide range of things (see s.D. and E.) but the Minister is not obligated to accept its recommendations or advice. The Minister (which one is not specified) must respond within thirty days to any recommendations even if only to say when he will respond fully (s.F.1.). The Minister may then refer matters back to the PCMB (s.F.4.). If he does so he is not bound to reject or accept any revised recommendations although he must supply reasons if he does reject a recommendation (s.F.5 and 6.). Further, the Minister is not bound in any way to consult the PCMB on matters related to the Porcupine Caribou and its habitat (s.F.2.). Finally, the Minister has overriding powers in an emergency situation (although it is not explained who may define a situation as an emergency) and does not have to consult with the PCMB although he must inform the PCMB of any emergency actions. Given that the political climate has changed over the years in regard to native claims it is to be expected that a draft of any original PCMA would differ considerably from the Agreement signed in 1985. Documentation on early negotiating efforts was not evident in the files of the YTG or the

GNWT. Notwithstanding this research problem an analysis of the PCMA signed in 1985 along with information obtained through interviews with PCMB members indicates that the PCMA is the result of years of negotiations. Further, the PCMA is evidence of changes in the attitudes of both government and native people.

Despite the fact that the PCMB was in its start-up phase during the period under study an analysis of the PCMA combined with observations gleaned from the Board's first two regular meetings along with the responses of individual Board members to interview questions suggests two major areas for assessment. They are:

1. the technical resources and research capability of the PCMB; and
2. the introduction and clarification of terms originating out of the native claims forum into the public policy arena where the acceptance of these terms represents a new approach to renewable resource management.

A reading of the PCMA suggests a number of other areas for assessment which will be touched on briefly. While a definitive assessment of the PCMB will not be offered some relevant observations will be made.

3.2 Technical Resources

In terms of the technical resources of the PCMB and how they relate to the overarching goal of joint management the actual clauses of the PCMA make the PCMB dependent on ministerial discretion. Once the PCMB's recommendations are accepted then the PCMB must rely on government and other sources, which are not defined in the PCMA, to follow its recommendations. The PCMB has no real control over the design of research plans and how research is conducted.

Under the PCMA the PCMB is assigned the duty of reviewing ". . . technical and scientific information relevant to the management of the PCH and its habitat and may advise the Minister of its adequacy."(s.D.4.see also s.M.2.). The PCMB is empowered to make recommendations to the Minister on such matters as:

1. development of research proposals;

2. areas where further research is needed; and

3. on methods of data collection and presentation (s.E.2.).

If the Minister accepts the PCMB's recommendations then the PCMB must rely on government departments to undertake the research requested to fulfill their recommendation. The PCMA is very specific on this: the PCMB has only " . . . a modest technical review capability in respect of primary research conducted by Governments and other sources."(s.I.2(c)). In other words the PCMB must rely on research conducted by government or other sources in making management decisions. As well, given that research is not conducted by a single body the PCMB must perform a coordination function so it does not have to depend on the happenstance production of research by biologists working for various governments. The PCMB, then provides a focus for the coordination of research by all interested and involved parties.

Some native Board members expressed dissatisfaction with this situation. They felt the PCMB should have its own research capability with access to funds that would enable the PCMB to hire 'good', independent researchers. Another member took a more pragmatic view by saying that the adequacy of the PCMB's resources remains to be seen. He noted though, that this adequacy will depend on how government chooses to interpret the PCMA because this will influence the willingness of government departments to undertake research requested by the PCMB. As well, the observation was made that the PCMB must rely on government research and not all members of the PCMB are employed by the government. The only person with access to departmental research budgets are the government members on the PCMB hence technical resources are not readily available to all members of the PCMB.[131]

The fact that the two territorial government members on the PCMB are Directors of their respective Fish and Wildlife Division (Yukon) and Wildlife Management Division (NWT) is important for the Board. In these positions they are able to commit the research funds of their departments. As members of the PCMB they will be sensitive to the requests of the PCMB

[131]Interviews with members of the PCMB, Dawson City, Yukon, 28-30 August 1986.

The dependency of the PCMB on government in terms of research poses another problem. In an era of ever tightening budget constraints the PCMB's ability to make well-informed management decisions could be damaged by cuts to government research budgets.[132] Such cuts could constrain the ability of government departments to respond to the requests of the PCMB.

In discussing the PCMB's research priorities at Board meetings government research reports were presented. At the conclusion of one such presentation it was indicated that government was hoping to get the PCMB to approve research already undertaken by government and in order to encourage native users to aid government researchers in the collection of accurate data.[133] There was no opportunity for the PCMB to make recommendations on methods of data collection (s.E.2.(c)). In short the PCMB was NOT taking the lead nor was it asked for input. Rather it accepted a passive role - more of a stamp of approval for work already underway. This is not the strong lead role that is suggested in the PCMA (s.E.). This criticism is softened by the fact that the PCMB was just getting started at this point and had not yet determined its research priorities. Further, there was evidence of good faith and full cooperation on the part of government members in their agreement to compile available information on the PCH and to work to coordinate research undertaken by the three governments who are party to the PCMA. As well, government members promised to identify areas where further research should be undertaken for use by the PCMB in determining its research priorities. Finally, government biologists were present at the Board meetings and available to answer questions from the PCMB.

The PCMA indicates that the PCMB, through its recommendations to the Minister (s.E.), can request the development and undertaking of needed research. One government member suggested that the way recommendations are formulated by the PCMB (as set out in S.E.1.,2.) and the fact that the Minister must respond to recommendations within thirty days

---

[132]The B & K Board has been confronted with just such a situation. Federal budget cuts to CWS in 1985 were reported as resulting in the loss of on-going research projects and the loss of a B & K Board member employed by CWS. CARIBOU NEWS, vol.3, no.5, February 1985.

[133]minutes, PCMB, Dawson City, Yukon, 28-30 August 1986.

is a strength of the PCMB (s.F.1.,6.). The same member went on to say that it would be unlikely that such recommendations would be rejected because of the process leading up to their formulation. Further, such recommendations would, because of the range of interests represented on the PCMB, be the 'best political advice' the Minister is likely to receive. This member went on to say any rejection of PCMB recommendations would likely be publicized and the Minister would then be faced with political embarrassment if his/her rejection was judged to be unfair. In a more cynical vein another Board member stated that the ability of the PCMB to get action on its recommendations depends very much on the political climate and how government chooses to interpret the PCMA.[134]

3.3 New Terms

The language used in the PCMA is concrete proof of a willingness on the part of government to accept the concept of joint management. For native users it demonstrates government acceptance of ideas previously used only by natives pursuing their aboriginal rights through the native claims process. Many Board members felt that it was self-evident that there is a link between comprehensive land claim negotiations and the PCMA. Some members went further to suggest that the creation of the PCMB was part of the process of gaining power bit by bit.[135] One native Board member agreed there was a link between the PCMA and land claims but went on to elaborate that this link did not necessarily mean that the PCMA had advanced native claims. In his view the PCMB represents a very important way of advancing native interests through the creation of structures such as the PCMB, where native interests are discussed. A territorial government Board member went a bit further to suggest that the PCMB, by working to ensure a good rapport amongst its members and listening and acting on their concerns could create a climate that would allow government and native organizations to address more contentious issues.[136]

---

[134]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.
[135]Ibid.
[136]Ibid.

Virtually all the members of the PCMB are involved in land claim negotiations or the implementation of land claim agreements. The maintenance of good relations amongst Board members is important as they are likely to encounter one another in different arenas, wearing different caps. Further, the PCMA states that the Agreement will be included by reference in comprehensive land claims and settlements and thus will be part of any final settlement (s.N.6). The complex nature of native claims, the difficulties encountered in negotiating such claims and a desire not to create any new issues that would have to be considered in negotiations favours cooperative interaction amongst Board members. The PCMA specifically seeks to reassure native organizations that the PCMA will in no way prejudice any claims (s.N.7.)

The open acknowledgement of the relationship between the PCMA and land claims is readily apparent in the way the PCMA is written. The Agreement adopts, to a large extent, the language of native claims making it part of the public policy lexicon. In doing so previously contentious terms have had a sense of legitimacy bestowed upon them. These terms include: subsistence usage; native users; preferential rights to harvest; delegation of decision making power to native user communities; and traditional trade and barter practices. Because these terms have been seen as both contentious and ambiguous care is taken to define them in the PCMA (s.A.). Nonetheless the language used in the PCMA represents one way of incorporating some of the concepts found in indigenous management with those of scientific management to achieve joint management.

The importance of these definitions becomes apparent when the debate surrounding the inclusion of aboriginal rights in the Constitution Act 1982 is considered. So far the delicate matter of defining these rights has resulted in three Constitutional conferences, both conferences failed to come to any agreement on how to define aboriginal rights.[137] An accepted definition is not a question of semantics, it is a political matter. The rest of this section will focus on a consideration of some of the terms used in the PCMA.

[137]GLOBE AND MAIL, 20 January 1987.

In the PCMA "conservation"(s.A.3.) clearly includes harvesting of the PCH, as opposed to "preservation" which most Canadians tend to equate with conservation. Conservation aims at ensuring the continuation and health of a resource while allowing the resource to be harvested. Preservation also aims at ensuring the continuation and health of a resource but it does not see this aim as being compatible with harvesting. The PCMA makes it clear that it is dealing with the management of a renewable resource for the long term benefit of users and the herd itself. In order to ensure long term use of the resource the Agreement is very much concerned with habitat management. The definition of "habitat" (s.A.4.) links the health of the PCH to the condition of the land. "Management"(s.A.6.), in turn, is defined as those activities associated with both wildlife and land management, giving the PCMB a wide mandate.

The decision as to who is qualified to enjoy special benefits as a native user is left up to the native user community (s. A.8. see also s.J.5. (a),(b),(c),(d) and s.K.6.). However, the PCMA does set out some criteria to be used to determine who can be defined as a native user (s.A.8.(a)(b),. (c)). The user is an aboriginal person and aboriginal users decide amongst themselves who is entitled to harvesting privileges as an aboriginal person. This decision represents a delegation of power to the local user community. Further, the way the definition is worded could allow for the extension of harvesting privileges to Alaskan aboriginal users. This particular clause goes on to acknowledge that the PCMB set up in the PCMA only has jurisdiction over Canadian aboriginal users.

The PCMA fails on one account to clarify a contentious term. This one failure is a notable exception as the term provides the basis of the rationale for the granting of preferential rights to harvest. The term is subsistence (found in s.A.12.). At the August 1986 PCMB meeting a presentation was made on the Alaskan perspective of negotiations towards an International Agreement on the PCH. In the discussion that followed it became clear that 'subsistence' is an important term yet the Alaskan native organizations, the Canadian government and Canadian native organizations do not offer a a clear definition of 'subsistence'. No clarifications were offered at the meeting.

Those native user communities that are considered under the PCMA are listed in this section on definitions (s.A.9.). The list is left open so communities may be added in the future. In identifying these communities the PCMA goes on to recognize conventional structures of authority as representing the community, such as the Chief or Band Council and local Hunting and Trapping Associations. There is also recognition of the possibility of new structures of authority evolving through comprehensive claims. Provision is made for the recognition of authorities set up under a settlement of claims. Thus the PCMA envisages a role for the PCMB into the future while dealing with the existing situation.

Finally, the PCMA states clearly what it means by 'preferential right'(s.A.12.). It is stated that any special privileges to harvest the PCH are restricted by good conservation practices. Unfortunately the explanation of 'preferential right to harvest' contains the ambiguous term 'subsistence'.

The use of these new terms, term previously used only by native organizations advancing native claims demonstrates a willingness on the part of government to attempt to reconcile scientific management and indigenous management and thus establish joint management as a viable form of wildlife management.

3.4 Other Significant Sections of the PCMA

Sections J., K., and L. of the PCMA represent an application of the new terms just discussed. These sections go one step further by taking concepts found in indigenous management and making them amenable to a regulatory regime in the manner of scientific management. For example, section J. is concerned with the 'allocation of annual allowable harvest in Canada'. In this section there is a clear statement that native user harvest allocation is a priority because native users have been acknowledged as having a preferential right to harvest (s.A.12. and s.J.3.). The section goes on to say that this preferential right exists because native user communities 'have a special and unique dependence on the PCH.'(s.J.8.). For the most part section J. focuses on delegating to the PCMB the job of setting out parameters by which Renewable Resource Officers, or other regulatory enforcement officers,

can determine who is eligible to harvest Porcupine caribou as a native user once native user communities have sub-allocated, amongst themselves, their portion of the native harvest allocation.

Section K., 'The Rights of Native Users', elaborates on the preferential rights granted to native users (as defined in s.A.8.). To circumvent the raising of any arguments along the lines that only traditional hunting methods can be used for native hunters to be able to claim a preferential right to harvest stemming from their aboriginal rights, the PCMA states that native users, ". . . have the right to employ traditional and current methods of harvest . . ." (s.K.5.). Section K., like section J., is concerned with establishing limits for the purposes of regulatory enforcement. Thus native users are ". . . subject to laws of general application with regard to conservation and public safety."(s.K.1.,7.). Finally, section K. recognizes that there is an existing regulation that infringes on the rights of native users and so the PCMA pledges that those groups party to the PCMA will ". . . use their best effort to enact any laws or regulations to allow native users the right to transport lawfully harvested Porcupine Caribou across any jurisdictional boundary within the Canadian range of the herd."(s.K.4.).

Section L., 'Commercial Harvest', delegates to the PCMB the task of creating a regulatory regime to permit native users to ". . . barter or trade with other native users for caribou meat, . . ." (s.L.2.(a)). This would normally be considered commercial harvest and as such it would be prohibited under the PCMA (s.L.1.). In order to create an acceptable regulatory regime based on practices of the indigenous system the PCMB must codify traditional native practices. In short, the unwritten rules of the indigenous system must become written and systemitized for understanding by scientific management.

Another interesting section of the PCMA is the one dealing with Board recommendations. The PCMA anticipates that Board recommendations may request government to pass legislation or regulations (s.E.1.). The PCMB is not limited in its ability

to make recommendations. It can make recommendations to other boards or agencies and to the Minster on matters which could affect the conservation of the PCH (s.E.2.(d),3.(a),(b)). This demands vigilance on the part of the PCMB and ongoing monitoring of the work of other boards or agencies. The PCMB is aided by the fact that its Board members serve on other boards and members also participate in negotiations which could affect the management of the PCH. This overlap helps the PCMB to keep track of what is going on. For example a Board member at the August PCMB meeting, recommended that the PCMB contact the Inuvialuit Enviromental Review Process, IERP, as soon as possible to inform the IERP of the PCMB's mandate concerning the PCH and its habitat and to request consideration as an intervenor on all matters pertaining to the PCMB's mandate.[138] As more land claim settlements are signed and as devolution continues from Ottawa to the territories it is likely that there will be yet more boards and agencies created increasing the amount of monitoring needed to be done by the PCMB.

Most members felt that the very existence of the PCMB means that it is likely a more balanced approach will be taken to the development of non-renewable resources which could adversely affect the PCH. However, members had no illusions as to the ability of the PCMB to withstand nonrenewable resource pressures where the development of these non-renewable resources were seen as being in the 'national interest'. Members felt that in such a case renewable resources would be sacrificed to the demands of non-renewable resource development, even though this would not be right.[139]

The PCMA is clearly an attempt to bring together the concepts of indigenous managment and scientific management. This is evident in the language used in the PCMA. Terms closely associated with native claims are accepted and then made subject to regulatory enforcement. With regard to the technical resources of the PCMB the PCMA is less successful. The PCMB's lack of independent technical resources means it must rely on government and because government actually does all primary research the PCMB does not have direct control over the research which forms the basis for the PCMB's wildlife

[138]minutes of the PCMB, Dawson City, Yukon, 28-30 August 1986.
[139]Interviews with members of the PCMB, Dawson City, Yukon 28-30 August 1986.

management decisions. On the whole the PCMA represents an innovative approach to wildlife management. It seeks to institutionalize aspects of indigenous management and combine these aspects with elements from scientific mangement under the name of joint management.

4. THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT AND NATIVE PARTICIPATION

4.1 Native Participation and Joint Management

In Canada wildlife management based on the principles of scientific management has been the institutional norm. This approach to wildlife management has excluded native harvesters from participating in decision-making on management matters. Under scientific mangement there has been no place for the knowledge of native harvesters unless it was translated into quantitative data and written down on paper.

As government started looking to the renewable resource sector of the North to provide the North with some long term economic stability it became evident that scientific management was an inadequate way to manage renewable resources. Scientific managers were forced to make decisions based on

> ". . . incomplete wildlife inventories and inadequate knowledge of the biology and ecology of many harvested species. [Further t]here is still too little information about the interaction between the use of renewable resources and the development of non-renewable resources."[140]

The efforts of native organizations, supported by the work of interested academics, established the existence of an alternative system of wildlife management, indigenous management but inadequacies in this system were also acknowledged, for example, the danger of overhunting because of the introduction of modern technology into the traditional systems and, to some extent, ". . . an erosion of the old [native] hunting ethic in modern society."[141] In summary, neither scientific management nor indigenous management alone provide an effective management system. A combination of these two management systems was identified as an alternative management system, in other words, joint management. The acceptance, by government, of the logic of joint management required government to redefine who should be making management decisions and how these decisions should be made.

---

[140]CARC, NATIONAL AND REGIONAL INTERESTS, p.383.
[141]Allison, "Caribou," NORTHERN TRANSITIONS, p.221.

Historically scientific management has been the norm and scientists have been the managers. Joint management, to be established, requires the involvement of native people in the management process.

> Effective management of renewable resources requires the greatest possible involvement of users. History demonstrates clearly the high cost and ineffectiveness of management systems that do not involve the resource users.[142]

Clearly the success or failure of joint management is heavily dependent on the extent to which native harvesters participate in the making of management decisions. This includes the " . . . genuine involvement of northern natives in research, management, and decision-making."[143] The knowledge on which indigenous management is based must be considered in any management deliberations and native people must see themselves as full, contributing participants in wildlife managment if it is to be joint management.

In considering the case study used here, the PCMB, the procedural and structural mechanisms which call for native input and the delegation of management responsibilities to user communities will be assessed in terms of how they contribute to the realization of joint management. Thus mechanisms which make the PCMB responsive to native users will be examined followed by a look at native participation in relation to the PCMA.

4.2 The Responsiveness of the Porcupine Caribou Management Board

One example of a sensitive issue demanding joint management is the case of native hunting in the Dempster Corridor. The Dempster Corridor is a corridor one kilometer on either side of the Dempster Highway.[144] Non-native hunters are not allowed to hunt within the corridor. However, native hunters may hunt there as it is considered unoccupied crown land, thus falling under the provisions of the Indian Act which supercedes territorial legislation restricting hunting in the area. In terms of the formulation of any long range management plans for the PCH the Dempster is an important factor. Sometimes the

---

[142]CARC, NATIONAL AND REGIONAL INTERESTS, p.386.
[143]Ibid, p.214.
[144]which, for the most part, runs through the Yukon with a small bit running through the northwest corner of the NWT.

migration route of the PCH takes the herd across, or very near to the Dempster Highway. When this happens harvesting of the PCH increases because the caribou are more accessible.

Four main points concerning hunting in the Dempster Corridor were identified by the Yukon House Select Committee during a recent public review of the Yukon's renewable resource policy. They were:

1. abuse of regulations by both native and non-native hunters;
2. hunting from vehicles;
3. meat wastage;
4. dangerous use of firearms.[145]

At one of the PCMB's meetings it was pointed out that, in part, the PCMB was formed to deal with the problems associated with hunting in the Corridor. Native Board members raised concerns over the bad public image being presented to non-natives by the hunting practices of some native hunters which gave the appearance of wanton slaughtering and waste of animals.[146] Native Board members were particulary sensitive to this public image as a perception of waste and slaughter was the source of much contention with regard to the B & K herds and the purported 'caribou crisis' discussed in chapter 2. Native Board members gave some indication that young native hunters needed to be chastised by the native user communities regarding their hunting practises. They felt that the support of government agencies would strengthen such community censure. [147] Native Board members went on to say that when cooperation occurs it should be recognized to demonstrate to the general public and government that native users have used resources responsibly. Once again, this call for recognition can be seen as a response to the condemnation of native hunters in the B & K case. Native people have learned that public support is a useful ally which can prompt government to act. All Board members agreed that new regulations were needed to deal with the situation and native members were urged to consult with their user communities so

---

[145]minutes of the PCMB, Aklavik, NWT, 4-5 November 1986.
[146]such as, gutting animals by the side of the road or leaving animals by the side of the road and returning later to collect them.
[147]minutes of the PCMB, Aklavik, NWT, 4-5 November 1986. See also Page, NORTHERN DEVELOPMENT, p.190.

community input would be incorporated in any new regulations the PCMB may recommend to the Minister(s) thus ensuring the cooperation and support of such regulations.[148]

Effective native participation by native people in the sort of research the scientific management requires demands individuals with technical training. Efforts to provide native people with the technical training necessary to participate in such research can be seen in the Arctic College's Renewable Resources Technology Program. "In six full two year cycles, 46 students have completed the program to graduate. Among these graduates 63% have been northern aboriginal peoples." [149] The availability of such training for native people without having to leave the North and enter southern society is an important step toward fuller native participation in scientific studies and the possibility of native experience influencing southern style research proposals. Given the importance of being a member of the community and participating in the subsistence economy to the continuation of the traditional native lifestyle their ". . . lack of willingness to leave the home community to take jobs in Yellowknife, Whitehorse or Ottawa . . ."[150] is understandable. Alienation from the land and community would serve to exclude them from the traditional native life.

While training facilities are available in the North it remains to be seen if the PCMB will make use of these facilities or try to establish training facilities of its own to enable native users to get the training needed to assist biologists in their studies. Given the PCMB's limited budget such funds will have to come from outside the Board's current budget. Awareness of potential funding expectations created in the PCMA led one Board member to state that the PCMB needs more money to do its job properly.[151] It remains to be seen if the PCMB can request, for example, one of the territorial governments to carry out a study and to stipulate that native users be employed in carrying out the study (s.E.1.(c)). Encouragement without a financial commitment by government means little. As well, it remains to be seen if there will

---

[148]minutes of the PCMB, Aklavik, NWT, 4-5 November 1986.
[149]Jack Van Camp, "Arctic College Renewable Resources Technology Program," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, p.119.
[150]Michael Whittington, NATIVE ECONOMIC DEVELOPMENT CORPORATIONS: POLITICAL AND ECONOMIC CHANGE IN CANADA'S NORTH (Ottawa: CARC, July 1984), p.9.
[151]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

be effective consultation between biologists and native users in research design. In short both a financial commitment and effective consultation are need if sections of the PCMA are to mean anything (J.1.,2.(a)). As the PCMB only has a review capability with regard to technical and scientific information any encouragement of native user participation in the collection of data relies on overall government employment practices. Further, if technical training alone is considered as the prerequisite to native participation in research then the value of traditional knowledge is lost. If this is the case then native researchers will be individuals who have been indoctrinated into the scientific system.

At both the August and November 1986 meetings of the PCMB matters were discussed which were important to establishing the PCMB as responsive to native user concerns. During these discussions native Board members tended to 'sit back and observe', content to let government Board members wrangle over administrative and procedural matters. One of the topics discussed, the establishment of guidelines for trade and barter, is an issue of compelling interest for native users yet it was the government Board members who called for native members to take the lead on the matter for the PCMB. Native members appeared to simply acquiesce to their request. Another instance where native Board members appeared to simply tolerate rather than participate was in a drawn out discussion on how the financial commitment of the federal government to the PCMB would be fulfilled. [152] This was one area in which the federal government was very well prepared and fairly intransigent because of accountability concerns, specifically the accountability of the federal government to the Auditor General. In the end this matter was hammered out in discussions between the territorial governments and the federal government outside of the regular Board meeting. After one rather protracted discussion on the matter of finances during a Board meeting a native Board member commented there was already too much red tape to deal with on the PCMB.[153]

---

[152]this discussion took up time at both the August and November 1986 meetings of the PCMB.

[153]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

Native Board members may be reluctant to lead discussions because of how they perceive their role as a Board member. They are more likely to see their role as that of a conduit to the communities they represent unlike representatives of government who are used to expressing their views 'on behalf of their government.' This means that native Board members see their duty as being one of going back to the community and listening to discussions on a particular issue, where, ideally a consensus is reached. That is indeed the ideal, more likely is a situation where a range of opinions are expressed with no resolution. The native board members then sees his duty as representing a range of community opinions for consideration by the PCMB. Finally, the fact that some of the native Board members are elders suggests that the communities they represent are likely to treat them and any information they pass on with some deference so an authoritative posturing is not necessary.[154]

Concerns can be raised about the format of the PCMB meetings and their structure which is based heavily on those structures found in the dominant white society.[155] Perhaps native members feel uncomfortable in such a setting and so are reluctant to take the lead in discussions. Alternatively they may be simply waiting to see where the discussion goes. If this is the case then it demands that government members remain sensitive and vigilant in recognizing those items which demand native input before a decision or policy is issued by the PCMB. Territorial government members appear cognizant of this but there are grounds for concern with regard to the federal governnment member, a concern of continuity. The history leading up to the signing of the PCMA and events since justify these concerns. The federal member on the Board has changed virtually with every meeting. Although the PCMA states that the federal member will be the senior federal civil servant in Whitehorse, which is the

[154]One government Board member suggested that in some instances the native Board member may see the need for a Board, not necessarily the PCMB, to act in an authoritative manner, making decisions which are unpopular at the community level. The native Board member may be unable to gain community support for such a decision and so silently support government members on a Board. This can be seen as a residue of a colonial mentality wherein decisions, including hard ones, have been made by non-natives, who are generally representatives of the government.
[155]Usher, THE DEVOLUTION OF WILDLIFE WILDLIFE MANAGEMENT, p.84.

Director General for DIAND, the position was empty for the August PCMB meeting in Dawson. A previous commitment by a federal representative to obtain information for the PCMB for the August meeting was not fufilled although another federal representative, an alternate, present at the August meeting agreed to get the information for the PCMB . At the November meeting the DIAND position was still open and yet another alternate came to sit on behalf of the federal government. Since that time someone has been named to the position and so should be present at the next meeting of the PCMB. This lack of continuity in membership means the federal member is often not aware of background information and so does not understand the rationale for policy decisions. Lacking such background he resorts to a strict legal and literal interpretation of available documents.[156] In summary, skepticism on the part of Board members with regard to the federal government seems warranted given the parade of federal representatives who have appeared at Board meetings to date and their lack of preparedness in the variety of matters discussed by the PCMB.

The above comments are tempered by the acknowledgemment that the PCMB is in a period of transition. The Board had had only two regular meetings at the time this research was undertaken. Further, readjustments are taking place amongst Board members in a more general way as well. Board members are adjusting to a change in their respective roles, they are no longer sitting across from one another at a negotiating table. Instead they are learning to work together as colleagues. A further complication arises in adjusting to this new relationship in that many of the Board members continue to sit on different sides of the table in other ongoing negotiations, specifically, comprehensive land claim negotiations. In some ways this overlap in personnel has advantages. One Board member suggested that it is precisely because Board members deal with each other in a variety of capacities on a range of issues that great care is taken to to maintain good will and credibility amongst Board members in all areas. Unsatisfactory relations on one matter could adversely affect other work on other matters, for example salmon treaty negotiations or land use planning.[157]

---

[156]Interview with members of the PCMB, Dawson City, Yukon, 28-30 August 1986. See also Canada, JAMES BAY AND NORTHERN QUEBEC AGREEMENT IMPLEMENTATION REVIEW.

[157]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

4.3 Native Participation

Within the PCMA there are many provisions calling for the participation of native people. This careful inclusion of specific clauses dealing with native participation along with statements recognizing that native participation will not simply happen, but must be encouraged shows that the PCMA is very much concerned with seeing that joint management becomes a reality in practice, not confined to words on a piece of paper.

In the North government has, generally, been 'the manager' using the principles of scientific management to manage wildlife. Through the PCMA the PCMB delegates some of the managerial duties previously assumed by government to user communities. As well, it is the task of the PCMB to ". . . co-operatively manage . . . [the PCH] . . . with a view to providing for the ongoing subsistence needs of native users;"(s.B.1.). The PCMB's task will be to translate this stated intent into practice. Thus far the PCMB has been very conscious of the fact that the only way it will truly be a joint management board will be if it actively seeks the input of native users and incorporates their input into the policies of the PCMB (s.B.2.).

Solicitation of native participation is not confined to an assurance of positions for native people on the PCMB (s.C.2.(b)and 3.(b),(c)). The PCMA makes many references to matters on which the Board should seek the participation of the native user communities. One of the PCMB's first acts was the hiring of a consultant to prepare a report on the various options for a communication strategy whose major focus would be native harvesters. At the presentation of the final communication report particular attention was paid to the native Board members and their views on the most effective way to reach native users and encourage their participation in the management of the PCH (s.D.1.).

All members indicated that effective communication is vital to the development of a long term managment plan for the PCH that will have the acceptance of both native users and government and that acceptance would be more likely to be forthcoming from native harvesters if they are kept abreast of the the work of the PCMB. The decision to hold all meetings of the PCMB in user communities was taken in order to encourage community input. Board members feel this will raise the profile of the PCMB amongst the primary users

of the resource. [158] Board members also feel that this will help establish the PCMB as responsive from the start. One native Board member went on to say that it was up to individual members to see to it that the PCMB is responsive to the user communities,[159] in other words stressing the role of native Board members as a representatives of user communities on the PCMB. The PCMA, because of its emphasis on native user representation and its acknowledgement of preferential rights for native users must be seen as responsive to user concerns. Board members have, thus far, shown a keen awarenes of this with native Board members very conscious of their communication function.

Community input is seen, by the PCMB, as playing a pivotal role in the establishment guidelines dealing with trade and barter of caribou meat for native use (s.L.2.(a),(b),(c)(d)). Once established these guidelines will constitute an institutionalization of traditional native practices within the public policy arena.[160] At the November 1986 meeting of the PCMB it was decided that a working group should be struck to develop these guidelines. Government Board members were quick to state that as the matter was of fundamental interest to native user communities native Board members should take the lead in the working group. Solicitation of community views on the matter was seen by all Board members to be crucial to the development of any guidelines if such guidelines are to be supported by native users.

One section of the PCMA does set out a specific process for native participation in the management of the PCH through a delegation of authority. This is where harvest sub-allocations are left up to the user communities to decide (s.J.5.(a)). In the strictly legal sense the territorial governments establish total allowable harvest for the PCH in Canada. In reality this number is set by the PCMB (s.J.3.). It is left up to the territorial governments to allocate the non-native portion (a minimum of 250 Porcupine caribou) of the harvest. Native

---

[158]Interview with members of the PCMB, Dawson City, Yukon 28-30 August 1986.
[159]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.
[160]the PCMB has no examples to draw on in developing these guideline. While the INUVIALUIT FINAL SETTLEMENT mentions trade and barter it does not set out any guidelines, nor have any been established by Inuvialuit to date.

user communities are then given the responsibility of sub-allocating amongst themselves their portion of the harvest as set out by the PCMB. This represents a decentralization of allocation authority and a devolution of management authority. Native users are empowered to decide on allocation on a community basis. The only restriction on their authority is that ". . . details of the sub-allocation shall be provided to the Board annually. . . for management purposes." (s.J.5.(b)).

In discussions leading up to the signing of the PCMA allocation of harvest was a contentious item. However, delegation of harvest sub-allocation authority to user communities was not contentious. The issue was the YTG's view that a specific minimum number of caribou had to be reserved for harvest by non-native people. Once agreement was reached on that number sub-allocation authority to user communities does not appear to have been a problem.

The PCMB earns full marks for its efforts to be responsive to user concerns. Its potential to receive full marks for its encouragement of participation by native users in the collection of statistics and biological information is limited by the lack of any 'concrete' encouragement (s.D.5.). 'Encouragement' is a rather nebulous word and nowhere in the PCMA is it made clear what constitutes 'encouragement'. More importantly, there are no concrete proposals for how such 'encouragement' will manifest itself. No agency is bound to provide the necessary training to enable native users to participate in the collection of statistics and biological information (sE.1.(c)). The PCMB can make recommendations to the Minister for ". . . training required to enable native users to participate in the management of the PCH . . ." (s.E.1.(d)) but there is no specific and separate allocation of funds for the purposes of establishing training programs. It is too early to tell yet if full and genuine native participation in all matters of management will occur. The ability of native board members to act as a bridge between the two management systems, scientific and indigenous, bringing to bear the knowledge of the indigenous management into the PCMB's management decisions remains to be seen.

5. COMPARISON OF THE PORCUPINE CARIBOU MANAGEMENT AGREEMENT AND THE BEVERLY-KAMINURIAK BARREN GROUND CARIBOU AGREEMENT

A comparison of the B & K Agreement with the PCMA is useful in that it highlights the development and growing acceptance by government of joint management. It shows the evolution of and acceptance of joint management by government and a greater trust of native people in government by the decision of native people to participate on joint management boards. The differences between the B & K Agreement and the PCMA also show a delegation of more responsibilities to native people in terms of their role in ensuring the continued good health of the PCH and a recognition of more native rights in return as they relate to participating in the management of the resource.

A look at the B & K Agreement signed in 1982 is important because this Agreement was the first renewable resource agreement to be based on the idea of joint management in the Canadian North[161] This Agreement created the B & K Caribou Management Board. Prior to the establishment of the B & K Board only biologists and government had worked together to establish management regimes. There had been no explicit inclusion or representation of the interests of native users on these management boards. The signing of the B & K Agreement acknowledged publicly what many game managers had come to see,

> . . . the futility of trying to impose a system of management and enforcement which the majority of harvesters do not acknowledge as legitimate, necessary or useful. Many [game managers] recognize that where there are rights, there should also be responsibilities, and that the user group should have some substantial responsibility for the well-being of the resource, and accept the consequence of failing to exercise that responsibility effectively.[162]

As mentioned in Chapter 2 the circumstance which precipitated the signing and implementation of the B & K Agreement was a perceived crisis in the health of the B & K herds. When the B & K Agreement was signed the signing ceremony was attended by government officials and only witnessed by some user representatives.[163] Further, the Keewatin Wildlife Federation, KWF, one of the primary user groups of the B & K herds was not an original signatory of the B & K Agreement. In contrast, the 1985 PCMA signing

[161]the Yukon Territory and the Northwest Territories.
[162]Usher, "Sustenance or Recreation," in Freeman, PROCEEDINGS, p. 68.
[163] CARIBOU NEWS, vol.5, no.2, August 1985.

ceremony was held in a prominent user community, Old Crow, and was well-attended by user representatives. For the most part this can be attributed to the differing circumstances surrounding the signing of the respective agreements and to progress being made in land claim negotiations. In contrast, the 1985 signing of the PCMA was an affirmation of the view that joint management is a necessary prerequisite to the development of an effective management regime. To date the B & K Board and the PCMB are the only two functioning joint management boards in the Canadian North.

When members of the PCMB were asked if they saw the B & K Board as their role model they said they referred to it for its experience, particularly in dealing with administrative matters, but it was not their role model. It was only during discussions on operating procedures for the PCMB that references were made to the experience of the B & K Board. These references were made in relation to such things as; deciding what should constitute a quorum for the PCMB; how meeting expenses should be dealt with and what sort of bank account the PCMB should open. One member of the PCMB who also sits on the B & K Board was called upon to relate any difficulties encountered by the B & K Board so the PCMB could avoid administrative difficulties in the future.

Some general observations can be made on differences in the two agreements. For instance, the PCMA is only involved with federal and territorial jurisdictions while the B & K Agreement deals with these jurisdictions and two provinces, Saskatchewan and Manitoba. This greatly complicates discussions involving jursidictional matters, a touchy subject at the best of times and one that becomes more complicated as the number of jurisdictions involved increase. As well, during the time the B & K Agreement was signed land claim negotiations were seen to be progressing after a period of delays. Pressures for oil and mineral development were still high and seen as adversely affecting land claims negotiations. The contentious and confrontational nature of land claims at this time is reflected, by omission, in the B & K Agreement where any reference to or mention of land claims is assiduously avoided. In contrast, the PCMA specifically identifies and addresses the relationship of the PCMA to land claims(s.N.6.). The PCMA states that it is to be incorporated by reference

into any comprehensive land claims sub-agreement, interim agreement or completed agreement. Further, ". . . its [the PCMA's] provisions are not to be used to interpret or derogate from the provisions of any comprehensive land claims settlement . . ."(s.N.7.). During the start-up phase of the B & K Board representatives of the KWF asked that the relationship between the B & K Agreement and land claims be clarified to indicate that the work of the B & K Board would not prejudice claims or impinge upon the Nunavut Wildlife Agreement, which was being negotiated in 1982. At one point one of the KWF representatives stated that the KWF would not participate on the B & K Board until the federal government had endorsed the Nunavut Wildlife Agreement. The fear was that the B & K Agreement would weaken the Nunavut Agreement. [164] The KWF was assured by the federal government that the B & K Agreement was not intended to prejudice their Wildlife Agreement negotiations, but the federal government refused to issue any policy statements to back up their assurances. After a bit of a stand-off the KWF decided to accept these assurances and participate on the B & K Board.

The inclusion of a recognition of land claims negotiations in the PCMA was a matter of concern to federal government representatives on the B & K Board. It was suggested that if the PCMA was included, by reference, in land claim settlements the PCMA would exist in perpetuity and this was not desirable as it would commit the federal government to an open-ended agreement. Further, it was felt that any Management Board that was formed should be a body strictly for communication and the development of consensus and not as a regulatory body. As well, there was concern expressed over section K of the PCMA which details the rights of native users. It was suggested that such rights were more properly negotiated under land claims and should not be established as part of the PCMA. In short what was being suggested was that the PCMA follow the form and style of the B & K Agreement.[165] In part the ability of the PCMA to refer to land claims is also a matter of a change in political climate. At the time the B & K Agreement was signed land claims were

[164]It is interesting to note that when these discussions were taking place on the fledgling B & K Board in 1982 all three federal members on the Board were absent. Beverly-Kaminuriak Board minutes, Winnipeg Manitoba, May 26 & 27,1982.
[165]from a memo in the files of CWS

highly contentious, one member of the PCMB suggested that because of this it was decided that the only way a B & K Management Board could function would be if it ignored land claims.[166] The fact that the PCMA came out much differently demonstrates the growing acceptance of land claims as well as the recognition of joint management as a valid and effective way to manage renewable resources.

The PCMA is an agreement which takes into account the connections and implications of wildlife management to land claims and provides for the participation and input of native people in the management of the PCH. A desire to enlist native users in management is evident from page one of the PCMA - the PCMA is an agreement among the federal government, the YTG, the GNWT, CYI, IGC and the Dene/Metis. In contrast native organizations are not party to the B & K Agreement. The B & K agreement is an agreement between the federal government, the governments of Manitoba and Saskatchewan and the GNWT.

While the B & K Agreement was careful to avoid the subject of land claims there is some recognition of tensions in the composition of the B & K Board. Native members outnumber government members. This was done to demonstrate good will on the part of government and to convince native users that the crisis facing the B & K herds required their participation and that government was willing to be in the minority if it would mean getting this participation so remediative action could take place.

In both agreements the migratory nature of caribou is identified as creating the need for an interjurisdictional management board. The dependent relationship between habitat maintenance and the good health of the herds is recognized as well as the need for cooperation between government and traditional users for coordinated management to occur. Both agreements recognize, in their preambles, that 'a special relationship exists between native users and these caribou.' It is only in the preamble of the B & K Agreement that any special interest by native people in the maintenance of the B & K herds is acknowledged. In comparison, throughout the PCMA there are references and elaborations of the nature of the

[166]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

special relationship that exists between native people and the PCH.

Great care is taken in the PCMA to define a number of terms it associated with wildlife management. The only such term defined in the B & K Agreement is 'traditional user', ". . . persons who have traditionally and/or currently hunted caribou for subsistence."(B & K Agreement, s.A.3.) No further criteria are set out to aid in identifying these 'traditional users'. In the PCMA care is taken to define who can be declared a native user (s.A.8.) and how such a person is recognized by a native user community. It is a process of self-identification whereby the native user community, (as defined in s.A.9.) determines who is a native user and thus entitled to the subsistence harvest of the PCH. This process of identification is a delegation of authority to the local level. Further, the PCMA acknowledges that the comprehensive land claims process may affect local levels of authority and provision is made to incorporate any such changes. The PCMA accepts the claims process as a given and something that may affect the way decisions are made in the future unlike the B & K Agreement.

It is interesting to note that neither the B & K Agreement nor the PCMA define 'subsistence' although both agreements make use of the term. Avoidance is understandable given the wide range of political implications associated with the term.

In the B & K Agreement it is clear that the Board has been established as a joint management board in order to coordinate management of the B & K herds through a process of shared responsibility. To do this the B & K Agreement recognizes that communication between native users and government must be established to ensure the cooperation of all parties in response to measures recommended by the B & K Board (B & K Agreement, s.B.). The B & K Agreement states that its primary objective is to ". . . develop and make recommendations . . . for the conservation and management of the B & K herds and their habitat in order to restore the herds, . . ."(B & K Agreement, s.C.1.).

The B & K Agreement acknowledges the inadequacy of existing scientific data on the herds and the need to conduct a review of the herd's condition (B & K Agreement, s.C.5.(b)(c)). Given that the meetings which led to the signing of the B & K Agreement

> . . . were often characterized by confrontation between government representatives and users over the acceptability of data, the solutions being proposed, and especially over the question who was to have control over the management process . . .[167]

it is significant that the Agreement makes no attempt at reconciling the two sides although the Board itself has said that its credibility with native users would be enhanced if there was greater involvement of native users in survey work. [168]

In contrast the PCMB has been given the ability to identify and determine ". . . appropriate principles, considerations and procedures that should be used in order to calculate a total annual allowable harvest and its allocations, . . . (s.J.2.(d)). This leaves the door open to native user input and does not assume an inviolability of 'scientific data'. The seriousness with which PCMB members view this clause is evident in a statement made by a government member at the August Board meeting, that biologists must go to the community affected by a study first, before commencing the study, ". . . to talk to people in order to produce an acceptable method."[169]

There is no specific mention of how the B & K Board will involve native users in the management of the B & K herds other than a brief mention that the Board may make recommendations with regard to the management methods of traditional users (B & K Agreement, s.C.1.(c)). In comparison, throughout the PCMA there are references to duties to be undertaken by user communities. There is potential for a great deal of input by native users. As well, an effort is made to prevent confrontational divisions from developing between biologists and native users. The PCMB ". . . shall encourage native users and other harvesters of the Porcupine Caribou to participate in the collection of statistics and biological information." (s.D.5.).

The financial arrangements for the B & K Board are spelled out within the body of the Agreement. An exact dollar figure is set out. It is specified that 2/5 of this amount will be paid by the federal government and 1/5 each by the remaining government parties (B & K Agreement, s.F.2.).

---

[167]CARIBOU NEWS, vol.5, no.2, August 1985.
[168]CARIBOU NEWS, vol.5, no.3, October 1985.
[169]minutes of the PCMB, Dawson City, Yukon, 28-30 August 1986.

The PCMA is less specific about the finances of the PCMB. The PCMA simply states that " . . .Government parties shall fund reasonable costs of the Board and Secretariat in equal portions and such amounts as agreed annually. . . (s.I.1.). This gives government some flexibility in determining the finances of the PCMB.[170]

For both the B & K Board and the PCMB funding is only seen as providing a 'modest review capability'. The undertaking of research projects by the boards is not considered. Instead both boards must rely on research being carried out by government departments or agencies. This means the work of both boards can be hindered by cuts in the federal or territorial civil services (and the provinces in the case of the B & K Board)and both boards are dependent on government to fulfill their research requests.

The B & K Agreement is considerably weaker than the PCMA with regard to efforts to ensure native participation. However, the perceived crisis situation surrounding the creation of the B & K Agreement demanded, government and biologists felt, a swift response so it is understandable that the B & K Agreement lacks the thorough consideration of what joint management should, ideally, entail, found in the PCMA. As well, the PCMA is the culmination of 10 years of discussion. During that 10 years the political climate has changed considerably. Assertions by native organizations that native people have the right to participate in making those decisions which affect them are now accepted by government. The B & K Agreement was the first step toward the institutionalization of joint management. The PCMA represents further steps towards the institutionalizing the concept of joint management as a desirable public policy alternative.

---

[170]The funding of the PCMB is secure for the first five years. Board members epressed the hope that this time would be used to establish the PCMB as part of the policy process and so ensure future funding for the PCMB.

6. NEGOTIATIONS TOWARDS AN INTERNATIONAL AGREEMENT

The migratory nature of caribou creates difficulties in terms of establishing a management regime. The fact that caribou cross a number of jurisdictions means that all jurisdictions need to be involved in management if management is to be effective. The PCH is even more problematic because it crosses an international boundary thus bringing into play issues of foreign policy and diplomacy which further complicate negotiations towards an international agreement that will manage the PCH as a shared resource between Canada and the United States. Happily though caribou is seen as rather a benign subject for Canadian and U.S. negotiators, unlike other renewable resources such as salmon. "'[T]here are no particular problems with the herd (PCH) at the moment to trigger quarrels over quotas or similar issues.'"[171] At the same time the migratory nature of the PCH and the fact that it crosses international borders demands the signing of an International Agreement. One member of the Canadian PCMB described such an Agreement as a must otherwise the only comprehensive good management would be by default or good luck.[172]

The signing of the Canadian PCMA has served to reopen negotiations between the U.S. and Canada on an International Agreement for the management of the PCH. Indeed, the Canadian PCMA concludes by stating the desirability of an international agreement with the U.S. to ensure conservation and management of the PCH (s.N.8.).

Previous negotiations for an International Agreement broke down in 1979. During that round of negotiations, sponsored by [illegible]VS, three issues were identified as requiring resolution. They were:

1. the degree of native participation in wildlife and land management;
2. the degree of habitat protection;
3. the size of any management commission established by an Agreement.[173]

With regard to the first issue, and as discussed earlier in this chapter, conventional wisdom now supports the idea of joint management to ensure that there is effective

[171]WHITEHORSE STAR, 26 August 1986.
[172]Interview with member of the PCMB ,Dawson City, Yukon, 28-30 August 1986.
[173]Keith, "A Canadian Perspective," p.18.

management.

With regard to the second issue, once again, the change in government in the Yukon was very important to the development of a cohesive Canadian position. Prior to the change the YTG was seen as being ". . . for development and industry and is likely to want rather modest habitat protection whereas native people, conservationists, the Department of Environment in Ottawa, would be pushing for stronger habitat protection."[174] However, this statement only gives part of the story. While CWS could be characterized as conservationist, other federal departments made a strong case for development in the 'national interest'. Ottawa's support of northern oil and gas activity culminated in 1980 with the passage of the National Energy Program, NEP. [175]

The recent dismantling of the NEP by the Mulroney government preceded by the decline in world oil prices and a glut in the natural gas market has eased considerably these pressures in Canada. However, some of the infrastructure put in place to aid hydrocarbon development, such as the Dempster Highway, continues to raise concerns amongst users in terms of adverse effects on caribou and wildlife in general. At the August 1985 meeting of the Canadian PCMB "[c]ommitments were made by both the Yukon and the NWT representatives on the Board to increase harvest monitoring, data collection and enforcement of hunting regulations in the Dempster Corridor. This was in response to concerns raised over problems related to hunting along the Dempster Highway."[176]

Finally, the third issue, the size of any management commission. The difficulty here is the number of jurisdictions and interests in Canada concerned with the management of the PCH as compared to the U.S. In the U.S. there are the federal, state and native interests while in Canada there are the federal government, two territorial governments and three native groups of hunters, Inuvialuit, Indian and Metis. These hunters, in turn, are represented

---

[174]Keith, "A Canadian Perspective," p.19.
[175]Incentives were given, starting in 1970 when Ottawa helped finance Panarctic's exploration program. Other encouragement included the approval, by Cabinet , for Dome Petroleum to drill in the Beaufort Sea in 1976 and the introduction of the Frontier Exploration Allowance in the 1977 federal budget.
[176]YUKON NEWS, 3 September 1986.

by three different native organizations, CYI, IGC and the Dene/Metis. All these groups with interest in the PCH feel they should have representation with regard to any International agreement dealing with the PCH.

The formation of the Canadian PCMB is the key to resolving this issue in terms of an International Agreement. The PCMB can act to coalesce all the interests involved. However, it must also be recognized that this is an international matter so the federal government has a special interest which will be represented by its Department of External Affairs. Members of the PCMB accept this, particularly in the negotiating phase of an Agreement. However, Board members expressed the view that once an International Agreement is in place and management is underway External Affairs is likely to play only a minor role because it will become bored with discussions on how to manage caribou.[177]

Aside from the three issues identified here as requiring resolution it should also be understood that U.S. domestic politics also contributed to the failure of CWS to make any progress on an Agreement in 1979, specifically, disagreement between the U.S. Department of Interior and Alaska over Alaskan wilderness legislation. The State of Alaska viewed an International Agreement with displeasure as it would give the U.S. Federal Government a mandate to carry out American responsibilities identified by such an Agreement. The international nature of the Agreement would give the U.S. Federal Government a reason to intervene in the state's historical authority to manage resident fish and wildlife. In short, the State of Alaska felt enough mechanisms existed already for cooperative management with Canada and a treaty would only give the U.S. Federal Government a reason to interfere in state management programs.[178]

When negotiations broke down in 1979 the U.S. indicated that it would not enter into new negotiations unless Canada could demonstrate it was a serious negotiator. The signing of the Canadian PCMA has established Canada's credibility as a serious negotiator with identifiable aims. [179] Through the PCMB Canada has a mechanism to coordinate all Canadian

[177]Interview with members of the PCMB, Dawson City, Yukon, 28-30 August 1986.
[178]from the files of the GNWT, Dept. of Renewable Resources, 1979.
[179]Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

interests in the area. An International Agreement is now seen by both sides, the U.S. and Canada, as a way to prevent problems. The current good condition of the PCH places policy makers in an ideal position of being able to formulate ways to deal with problems before they arise thus avoiding crisis management. The chief proponents of an International Agreement are native user groups on both sides of the border for whom caribou represents an integral part of their subsistence and mixed economy. These groups have worked together to get the negotiations moving once again and to ensure that any Agreement that is signed recognizes and protects subsistence use of the PCH.[110]

Native organizations are now supported by the territorial governments in their desire to see an International Agreement signed that will ensure proper management of the PCH. The PCH is seen by the territorial governments as one of the renewable resources which forms the basis of their local economies. At a recent conference on renewable resources Nick Sibbeston, then Government Leader in the NWT, summed up this view: "The recent drop in the price of oil and the longer-term decline in base metal prices are beginning to negatively affect our [the NWT] economy. In this context the renewable resource sector becomes an important area for building a stable and diversified economic base."[111] In short caribou, as a renewable resource, is seen as part of any plan for long range economic development in the territories, hence to jeopardize the resource could be to jeopardize long term economic stability.

Presently the greatest threat to the good health of the PCH comes from the U.S. and the implications of a bill before both Congress (H.R.39) and the Senate (S.9), the Alaska National Interest Lands bill. The bill has been passed by the powerful U.S. Senate Energy and Natural Resources Committee. It ". . . is heavily weighed toward development and would open the Arctic National Wildlife Range [in Alaska] to petroleum exploration. [112] As well, the U.S. Department of the Interior has forwarded a

---

[110]"Villagers Win New State Accord on Caribou Convention," ARCTIC POLICY REVIEW, June 1984.
[111]Sibbeston, "Keynote Address," NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT, pp.153-54.
[112]NORTHERN PERSPECTIVES, vol.VII, no.7, 1979, p.4.

> . . . draft report and legislative environmental impact statement (LEIS) on the oil and gas potential of the Arctic refuge [ANWR] available for public review so that public comments can be considered before a final report and LEIS are submitted to Congress next spring [March 1987].[113]

At the second meeting of the Canadian PCMB the implications of this bill were discussed. It was the Board's position that they want an ". . . agreement soon in case pressure from oil companies should change the protected status of Alaska's North Slope where the caribou calve, . . . "[114] This strategy of working toward an International Agreement would include ". . . some sort of control over industrial proposals - such as ports [necessary for the development of hydrocarbon finds in the area] on the north coast in Alaska, the Yukon and the NWT." [115] Hugh Monaghan, a YTG representative on the PCMB state that "'I [Monaghan] would hope there would be a statement by the two countries [Canada and the U.S.] that developments that could have a significant effect on the caribou would be subject to a thorough review.'" [116]

The political will for the signing of an International Agreement to ensure the future of the PCH on the part of the territorial governments, Ottawa, Canadian native organizations and Alaskan native organizations is strong. However, the complexities associated with any negotiations for an International Agreement as well as the desire on the part of the Canadian and American federal negotiators to consider the interests of the non-renewable resource developers has slowed down negotiations. Further, the various levels of government involved are seeking to establish the good will to enable negotiations on the management of more contentious species such as the polar bear and bowhead whale later on. The successful completion of a caribou agreement is seen as the first step toward agreement to negotiate on these other species. Hence negotiators are being careful not to upset anyone.

During the latest series of negotiations two issues have been identified as being problematic and a source of contention between the U.S. federal Department of Fish and

---

[113]ALASKA JOURNAL OF COMMERCE AND PACIFIC RIM REPORTER, 22 December 1986, p.18.
[114]YUKON NEWS, 3 September 1986
[115]WHITEHORSE STAR, 26 August 1986.
[116]WHITEHORSE STAR, 26 August 1986.

Wildlife and Alaskan negotiators. They are:

1. habitat protection

> ". . . Alaska's postion has been that industrial developers proposing to work in the area where the caribou herd ranges would be required - under the permitting process established as part of the agreement - to use the "best technology" available among other things. [Bob Childers, a member of the International Porcupine Caribou Commission, IPCC, commented that] 'Most observers suspect the interior department sees that standard as being too rigid. . . . officials probably don't want to alienate the oil and gas industry. Childers said he expects the state to go along with the demands of the interior department. 'There is no way we can compell them to change their minds on this.'".[187]

and

2. guarantee of subsistence user priority access to the caribou. There is debate as to whether such a provision would be constitutional given the fourteenth amendment in the American Constitution guaranteeing equality. Priority access is seen as creating special rights for a certain group hence contravening the first amendment.

When negotiations resumed in December 1986 a tentative agreement was reached. This agreement was a very much watered down statement for the conservation of the PCH. Under this tentative agreement oil and gas exploration was not affected in any way in Alaska. Initially the Yukon Minister for Renewable Resources, Dave Porter, appeared to be considering this tentative agreement as the 'best' they could get from the U.S. [188] However, with some time for reflection the Yukon government decided that opening up the Alaskan calving grounds of the PCH to oil exploration was unacceptable. [189] An executive of CYI described the tentative agreement as little more than ". . . an agreement for a method of exchanging scientific information. . . ."[190]

The non-renewable resource development impetus from the U.S. is strong, in ". . . early December 1986 the United States Department of the Interior released a study recommending full-scale oil and gas development on Alaska's North Slope because geologic tests show as many as 9.2 billion barrels of oil could be taken from the 1.5 million acre

---

[187]WHITEHORSE STAR, 9 October 1986.
[188]WHITEHORSE STAR, 4 December 1986.
[189]WHITEHORSE STAR, 6 January 1987.
[190]WHITEHORSE STAR, 6 January 1987.

wildlife refuge."[191] The sort of International Agreement that was initialled would contribute little to the ability of the Canadian PCMB to develop and implement a management plan to ensure the viability of the PCH as a transboundary renewable resource.

Alaskan non-renewable resource development plans include the sensitive calving grounds of the PCH. Any disturbance of the PCH during calving could have grave consequences for the continued good health of the herd and the extent to which Canadian native people can rely on the herd for subsistence usage. It was clear from the discussions on an International Agreement at the August and November 1986 meetings of the PCMB that all Board members see an International Agreement as a prerequisite to any comprehensive management plan for the PCH.

As of February 1987 there have been no new developments with regard to the International Agreement that was initialled in December 1986. In any case ". . . the agreement does not guarantee a halt to oil and gas development of the area."[192]

[191]WHITEHORSE STAR, 6 June 1987.
[192]NATIVE PRESS, 6 February 1987.

7. CONCLUSION

The PCMA is an innovative piece of public policy. In a hitherto unprecedented fashion it seeks to incorporate native people into the decision making process. The ability of the PCMA to realize this goal is enhanced by the fact that government accepts native interest in wildlife management as part of their aboriginal rights. This has made it, in relative terms, easier for native people to advance their claims to a right to participate in decision making as it relates to wildlife management as opposed to other areas where the existence of aboriginal rights, and hence native interest in a particular matter, is disputed by government.

A popular and romantic image of a traditional native person for most Canadians is that of a person who hunts, traps and fishes for his livelihood. This image is especially prevalent in relation to Northern Canada where harvesting rights are seen as vital because of the lack of other economic opportunities to be pursued in the place of harvesting activities by native people. It is understood that there are non-native people engaged in harvesting activities but their number is not large nor is their right to access to wildlife seen to be as compelling as that of native people. In any case the PCMA has been careful to recognize the harvesting rights of non-native people by reserving a minimum number of Porcupine caribou for their use.

In terms of broad political considerations the federal government has little to lose by granting native harvesting rights or by taking steps to include native people on bodies concerned with the management of wildlife resources. The federal government still retains the power to make all decisions related to the development of non-renewable resources in the North depite the fact that non-renewable resource development can adversely affect renewable resources. In making such decisions the federal government can, and has in the past, appealed to an imperative created out of the 'national interest'. All members of the PCMB expressed the view that the PCMB would not be able to prevent non-renewable resource development that would harm the PCH if the federal government decided such development was in the 'national interest'.[193]

[193]Interviews, members of the PCMB, Dawson City, Yukon, 28-30 August 1986.

The territorial governments also support the right of native people to participate in wildlife management. This can be seen as part of their stated position that northerners should be making the decisions on matters which directly affect them as opposed to a distant federal government which does not understand fully the unique concerns of northerners. As well, the territorial governments have come to support the view that native people have a right to participate in decision making in a number of areas because of the existence of aboriginal rights. In this regard the territorial governments are committed to a 'fair settlement of land claims' that will articulate these rights and what they entail. Although there are some differences between Northern native organizations and the territorial governments as to the extent of these rights and the role of the territorial government in the North in the future there is nevertheless a broad statement of support for native goals by the territorial governments. As well, in terms of practical considerations the territorial governments know it is difficult if not impossible to enforce wildlife regulations which native harvesters consider spurious. It is simply impossible for these governments to enforce regulations in the scattered and isolated communities of the North given the number of Renewable Resource Officers. Board members noted that a cooperative commitment on the part of all those party to the PCMA and those the PCMB seeks to regulate is necessary for the PCMB to be effective.[194]

Native people are motivated to participate in joint management because of their desire to see that there is a harvestable surplus of caribou and that they continue to have access to this surplus which is vitally important to their traditional subsistence economy. A joint management regime involves native people in the management of an important resource. It creates a sense of responsibility in native people for the continued good health of the resource by installing a management regime which is responsive to native concerns. Joint management creates a sense of stewardship and a concomitant obligation to protect the resource as well as benefit from it.

[194]Interviews with members of the PCMB, Dawson City, Yukon, 28-30 August 1986.

7.1 The Agenda of the Porcupine Caribou Management Board

In terms of an agenda the PCMB has performed most of the tasks necessary for it to become operational. They included: ensuring eight voting members were appointed and ratified for a five year terms by the Ministers (s.C.3.); the appointment of the first PCMB Chairman, according to the conditions set out in the PCMA (s.C.4.(a)); establishing operating procedures (s.G.); establishing a secretariat (s.H.); and signing a funding agreement with the Government parties and working out other PCMB financial arrangements (s.I.).[195]

At the end of its first two formal meetings the PCMB had fulfilled a major task. It approved a communication strategy with particular emphasis on communication with native user communities (s.D.1. & 3.). To carry out this strategy a PCMB Communications Committee has been formed.

Work has begun toward the execution of other 'shall clauses' of the PCMA with various Board members being delegated tasks at each meeting. The summary minutes of the Board meetings contain an 'Action Appendix' indicating who has been delegated what task. For instance, some native Board members have been asked to provide lists of eligible native users. Such lists are required under the PCMA for each user community and are to be provided to the PCMB by CYI, IGC and the Dene/Metis on behalf of the communities (s.D.6.;J.5.(b); K.6.). One of the 'shall clauses' involves a delegation of responsibility to native user communities for the sub-allocation of native harvest allocation amongst themselves on a community basis (s.J.5.(a)). Following this clause is one which states that sub-allocation for Dawson and Mayo must be reported to the Yukon Wildlife Management Board (referred in the Yukon Indian Agreement-in-Principle). However it is not stated if the communities or the PCMB must do this reporting (s.J.6.). Nevertheless it is the case that once the PCMB delegates this harvest sub-allocation duty to the communities the communities will continue to do it.

---

[195]One of the native Board members stated that the work required to establish operating procedures and the financial arrangements for the PCMB involved too much paperwork and 'red tape'. Interview with member of the PCMB, Dawson City, Yukon, 28-30 August 1986.

On a more seasonal basis the PCMB's agenda will include considerations of: annual allowable harvest for the PCH, which includes an examination of the special requirements and preferential rights of native users with the possibility that the setting of annual allowable harvest may not be required (s.J.2.(d)(e) & 3.); and the reservation of a minimum of 250 Porcupine caribou for allocation by the territorial governments (for harvest by non-natives)(s.J.4.).

Many of the 'shall clauses' are part of the ongoing work of the PCMB. For example, the PCMB will: be deciding the ways it will meet the PCMA's objectives through its recommendations on research and regulations and through its work on a management plan(s.D.2.); be reviewing technical and scientific information related to the PCH as new information becomes available; be convincing native harvesters of the PCH to participate in things like road checks (here the PCMB's communication strategy will be important in terms of convincing native harvesters to participate) (s.D.5.); need to engage in ongoing educational and information activities to establish that native users have a prefetential right to harvest (s.K.2.); need to establish that native users have the right to employ traditional and current methods of harvest through ongoing communication with the user communities (s.K.5.).

The 'shall clause' which calls for the Government parties to the PCMA to work ". . . to enact any laws and regulations to allow native users the right to transport lawfully harvested Porcupine Caribou across any jurisdictional boundary within the Canadian range of the Herd."(s.K.4.) demands a concentrated and coordinated effort by the PCMB in making a strong case for changes to existing laws and regulations of all jurisdictions involved. This clause has not yet been addressed by the PCMB as a body and will undoubtedly be a future agenda item even if only to ask the government Board members if there has been any progress. Another similar clause also demands the concentrated effort of the PCMB. It calls for the establishment of guidelines to allow native users to engage in commercial harvest (s.L.2. and 3.). These guidelines will then have to be forwarded to the Government parties to the PCMA and accepted by them. The PCMB has begun work on this. At the November meeting all representatives of native user communities were asked to discuss this matter with

their respective communities and report back to the PCMB at the next Board meeting.

The PCMB has before it two other major matters which require action. They are, hunting in the Dempster Corridor and the formulation of a management plan for the PCH. The PCMB agreed that regulations are needed and native Board members indicated their approval of stricter enforcement of any existing and applicable regulations. The PCMB decided to form a Dempster Highway Working Group in order to provide a background paper on the situation with options for dealing with the situation. Native user representatives were, once again, asked to discuss the matter with their communities and report back to the PCMB. The Dempster Corridor presents the PCMB with a difficult management problem, how to regulate native hunting in an area where legislation and regulation do not apply. This problem needs to be resolved for any long range management plan to be effective.

One of the objectives of the PCMA is "to co-operatively manage, as a herd the Porcupine Caribou and its habitat within Canada so as to ensure the conservation of the Herd . . ."(s.B.1. see also s.E.1.(a),(b)). At the August meeting of the PCMB there was a consensus that in order to meet this objective a management plan is necessary. A plan would then '. . . guide researchers and . . . demonstrate the Board's leadership in long range management planning.'[196] A Board member was then delegated the responsibility of writing a short report on management plan options for the PCMB to consider.[197] This report was presented at the November meeting where it was decided that work would begin on the formulation of a management plan for the PCH. It was estimated that a management plan for the PCH will take two years to develop. Given the estimated length of time to complete a management plan this is a matter which will concern the PCMB from meeting to meeting and it will certainly influence any future policy decisons. Indeed, because a management plan is 'in the works' it may serve to delay decisions pending its completion and release.

---

[196]minutes of the PCMB, Dawson City, Yukon, 28-30 August 1986.

[197]This was the member representing the GNWT. This member is also on the B & K Board which just released a management plan for the B & K Herds, a plan which took six years to develop because of the confusion surrounding the status of the herds.

Another major issue before the PCMB, but one largely out of its control, is the American position on non-renewable resource development with regard to the Alaskan calving grounds of the PCH. Because the PCH is a shared resource and because of the importance of the calving grounds to the continued good health of the PCH, the only issue biologists seem to agree on, is that any non-renewable resource development that disturbs the calving grounds could have grave implications for the continued good health of the PCH and the ability of native harvesters to continue to rely on the Porcupine caribou for subsistence usage. At both the August and November 1986 meetings of the PCMB the status of an International Agreement was discussed with great concern. On both occasions all Board members agreed that an International Agreement was essential for any comprehensive management of the PCH.

It was stated clearly that the PCMB must be involved in any negotiations and the PCMB must have a seat on any International Board that is formed. As well, it was decided that any PCMB representatives involved in negotiations must seek advice from the user communities during negotiations. All members of the PCMB stressed that habitat protection must be considered in any negotiations. At both PCMB meetings there was also some discussion of efforts by some negotiators to have a 'compensation clause' in the International Agreement. It was indicated that a compensation clause would set out guidelines for compensation to the harvesters of a renewable resource, for example caribou, should their access to, or ability to harvest, become diminished or impaired by non-renewable resource activities.

It was indicated that a 'compensation clause' did not have universal support in negotiations so the PCMB was gathering information on existing compensation agreements to support the PCMB's representative on this matter. These efforts by the PCMB toward ensuring the inclusion of a compensation agreement are understandable given the PCMB's concern for habitat protection and the threat that American non-renewable resource activities pose to the integrity of the habitat.

At the time this thesis was written international negotiations did not appear promising. Non-renewable resource development activities appeared to have won out in the U.S. over conservation concerns. If no agreement is reached with the Americans to offer, at least, some safeguards for the PCH's calving grounds then any comprehensive management efforts by the PCMB will only be partially successful.

Another issue which offers cause for concern in relation to an International Agreement is the lack of a clear definition of 'subsistence'. The PCMA gives no clear definition and no definitions were forthcoming at either the August or November meetings of the PCMB. Board members appeared to accept that 'subsistence', and more specifically, 'subsistence usage' were important terms but no one was willing to offer any details about what these nebulous terms encompass. It was noted that 'subsistence' means different things in the U.S. and Canada but, again, no one was willing to describe just how they were different.

It is clear that there are some tricky political considerations here. Any definition of 'subsistence' or 'subsistence usage' would seem to be linked closely with aboriginal rights and traditional native activities with the possibility of special rights being accorded because of this link. A recognition of special rights would be unacceptable in the U.S. given the U.S. Constitution's position on equality. In Canada, aboriginal rights are not yet defined and they continue to be the subject of constitutional conferences. In clarifying what is meant by 'subsistence' and 'subsistence usage' the PCMB will have to tiptoe around a political minefield.

7.2 A Preliminary Assessment of the Potential of the Porcupine Caribou Management Board

In terms of more general political considerations the PCMB has a potential for genuine and effective native involvement in the management of a renewable resource stock. The PCMA has a number of clauses which focus on seeking native input prior to decision making. This gives native people the opportunity to influence board decisions and advance native interests through participation on the PCMB and through the articulation of user

community views to the PCMB. The PCMA recognizes that native input, not simply a native presence, is essential to the development of any management plans if such plans are to receive the support and compliance of user communities. A reading of the PCMA indicates that user communities are assigned a pivotal role in the decision making process of the PCMB. At the two PCMB meetings I attended the Board showed itself to be very sensitive of the need to actively solicit community opinion on a ranges of issues. Native Board members were constantly being asked to seek out community opinion on a variety of matters and then report back to the PCMB so the PCMB could use this information in the formulation of policy. As well, joint management shows government as being willing to accept the existence of an indigenous system of wildlife management and to consider the knowledge of this system in making effective management decisions. This acceptance of an alternative management system to scientific management is a major breakthrough.

In soliciting native input the PCMB shows itself to be responsive to user concerns by giving native people a role to play in ensuring the good management of an important renewable resource. The joint management regime of the PCMB endeavours to give native people a sense of stewardship by making the management system their management system rather than some alien system being imposed on them from outside. The PCMA endeavours to create a sense of responsibility in native harvesters by being responsive to them. In terms of future assessments of the PCMA it will be necessary to see what happens to native input after it has been presented to the PCMB. It remains to be seen though if the two knowledge bases, indigenous and scientific, can be amalgamated and then translated into policy.

There is a danger that native board members may become lost in the bureaucracy. Any incorporation of indigenous management ideas requires that these ideas be documented in the 'scientific management fashion'. This means that information from indigenous management must be rendered into a form which makes it amenable to regulatory enforcement, and thus becomes part of 'the system'. One example of this is the task currently before the PCMB of codifying existing traditional native trade and barter practices (s.L.2.(c)) so they can be regulated. On the one hand this represents a true effort to understand and

incorporate traditional native practices into a joint management system. On the other hand, it demands that these practices conform to the style of existing management regimes, scientific management regimes. It is clearly the job of indigenous management to adapt to the style and form of scientific management and not vice-versa. It is up to the members of the PCMB to ensure that input from native board members and user communities is truly incorporated in an acceptable manner and not simply given a polite hearing and then ignored. The fact that indigenous knowledge does not yet stand on a completely equal footing with the scientific system means that there is a danger that native board members may be co-opted by the scientific system and its attendant bureaucracy.

Native Board members have a great potential to advance native interests through the PCMB. The successful inclusion of indigenous management practices under the name of joint management will help establish native people and user communities as responsible and capable managers. While the need for indigenous management to adapt to the style and form of scientific management may be considered a drawback, successful adaptation will demonstrate that native proposals, based on traditional practices, can be successfully and easily accomodated within the Canadian polity.

In order for the PCMB to realize its potential as a joint management board it must be flexible. This means the PCMB must be willing to support policy decisions which deviate from the norm of Canadian politics, the PCMB must be willing to be innovative. As well, a continuity of government board members is necessary to the development of understanding, particularly by the federal government, of the long range goals and intentions of the PCMB. It is the responsibility of native members of the PCMB to clearly articulate indigenous management practices and to ensure that the PCMB is responsive to user communities by continually encouraging these communties to voice their concerns to the PCMB. This means that native Board members must maintain close contact the communities they represent and keep the communities abreast of the PCMB's activities.

During the course of interviews with members of the PCMB there was constant reference to the ideals of 'cooperation', 'good will', 'good faith', and 'credibility' as being

the mechanisms to compel the Minister to consider seriously the PCMB's research requests. In general, Board members have shown themselves to be fairly well-satisfied with that. However, there is some room for apprehension. In specific, some Board members mentioned dissatisfaction with the actions of the federal government since the PCMA was signed. They mentioned a tendency of the federal government members to read the PCMA in a strictly literal manner with no knowledge or awareness of the history behind specific clauses and the rationale for the inclusion of certain clauses in the PCMA.

The results of the federal review of the James Bay and Northern Quebec Agreement in 1982 support this apprehension. One of the main issues of the review was the failure of the federal government to honour the terms of the Agreement. This failure was attributed to differing interpretations of sections of the Agreement by native people and the federal government.

> As in the case with many other provisions of the Agreement . . . difficulties in implementing stem more from honest disagreements as to the meaning and spirit of the Agreement than from any attempt to deny the native parties rights or benefits to which they are entitled. [191]

The future ability of the PCMB to rely on 'good faith' in terms of requesting research from the federal government may only last as long as specific government members are appointed to the Board. It would seem that institutional memory is shortlived and this could create problems in interpreting the intent of the clauses in the PCMA concerned with technical resources and research.

The territorial governments seems to inspire more confidence in native board members while the federal government is seen, in general, by native people and the territorial governments, as being distant and insensitive to the concerns of Northern Canada. The territorial governments have shown themselves to be supportive of native claims and more open to innovative proposals dealing with political development. The federal government, on the other hand, has found it more difficult to accept proposals deviating from existing norms in Canadian politics. While individual federal public servants stationed in the North may be

---

[191]Canada, JAMES BAY AND NORTHERN QUEBEC AGREEMENT IMPLEMENTATION REVIEW (Ottawa: Minister of Indian Affairs and Northern Development, February 1982). p.75.

sensitive to Northern concerns they must follow the forms and procedures prescribed by distant Ottawa. As well, the frequency of transfer amongst personnel in the federal civil service creates difficulty in continuity and thus an understanding by federal civil servants of the circumstances leading up to things such as the PCMA.

For the most part the potential of the PCMB to be an effective and genuine joint management board rests on the efforts of board members to remain true to the clauses of the PCMA. However, there is one area which is basically out of the control of the PCMB. That is, access to technical resources. While individual government Board members may control departmental research budgets they are constrained in fulfilling the research requests of the PCMB by competing demands within their own departments, by government budget cuts and by government employment practices in their ability to act on PCMB recommendations which include recommendations on the involvement of native people in research. Although the PCMA sets out limits to the time a Minister may take to respond to PCMB recommendations and that any Minister must justify any refusal of a recommendation it is, in the end analysis, a matter of ministerial discretion as to how PCMB recommendations will fare. Here, the experience of the B & K Board offers some cause for concern. At one point there appears to have been some dissatisfaction with the manner in which the Minister was dealing with the B & K Board requests. It was felt that the Minister was not really paying attention to them.[199]

More time is needed to assess whether or not the PCMB has been successful in fulfilling the terms of the PCMA. It is off to a good start as an example of innovative public policy that allows native people to participate in public policy making and, in doing so, provides native people with a forum to advance native interests.

---

[199]CARIBOU NEWS, vol.3,no.4, December 1983. The Chairman of the B & K Board went further and suggested that letters from the B & K Board to the Minister: were merely acknowledged; or replies were little more than letters of reassurance; or letters were passed on to other committees to be 'lost in the paper merry-go-round'.

BIBLIOGRAPHY

Periodicals

ALASKA JOURNAL OF COMMERCE AND PACIFIC RIM REPORTER. 22 December 1986.

CARIBOU NEWS. vol.1, no.2. July 1981.

CARIBOU NEWS. vol.1, no.4. December 1981.

CARIBOU NEWS. vol.2, no.6. April 1983.

CARIBOU NEWS. vol.3, no.5. February 1984.

CARIBOU NEWS. vol.3, no.5. February 1985.

CARIBOU NEWS. vol.5, no.2. August 1985.

CARIBOU NEWS. vol.5, no.3. October 1985.

CARIBOU NEWS. vol.5, no.4. December 1985.

CARIBOU NEWS. vol.6, no.2. August 1986.

GLOBE AND MAIL. 13 February 1984.

GLOBE AND MAIL. 20 January 1987.

NATIVE PRESS. 6 February 1987.

NORTHERN PERSPECTIVES. vol.VII, no.7. 1979.

NORTHERN PERSPECITVES. vol.II, no.2. 1983.

NORTHERN PERSPECTIVES. vol.13, no.2. March-April 1985.

NORTHERN PERSPECTIVES. vol.13, no.5. November 1985.

NUNAVUT. vol.5, no.7. July 1986.

WHITEHORSE STAR. 26 August 1986.

WHITEHORSE STAR. 9 October 1986.

WHITEHORSE STAR. 4 December 1986.

WHITEHORSE STAR. 6 January 1987.

YUKON NEWS. 3 September 1986.

Government Documents

Canada. PORCUPINE CARIBOU MANAGEMENT AGREEMENT. 1985.

DIAND. JAMES BAY AND NORTHERN QUEBEC AGREEMENT IMPLEMENTATION REVIEW. Ottawa: Supply and Services. February 1982.

DIAND. LIVING TREATIES: LASTING AGREEMENTS. Report of the Task Force to Review Comprehensive Claims Policy. Ottawa: Supply and Services. 1985.

DIAND. THE WESTERN ARCTIC CLAIM: THE INUVIALUIT FINAL AGREEMENT. Ottawa: DIAND. 1984.

files. Department of Renewable Resources. Government of Yukon.

files. Department of Renewable Resources. Government of the Northwest Territories.

files. Canadian Wildlife Services.

Government of Canada, House of Commons. INDIAN SELF-GOVERNMENT. Report of the Special Committee. 1st Session, 32nd Parliament. 12 & 20 October 1983.

POLITICAL AND CONSTITUTIONAL DEVELOPMENT IN THE NORTHWEST TERRITORIES. (revised) sessional paper prepared for the 8th session, 10th Legislative Assembly of the Northwest Territories. June 1986.

Yukon Government, Department of Renewable Resources. THE FUTURE OF THE YUKON'S RENEWABLE RESOURCES. A Discussion Paper. December 1985.

Articles in Journals

Abele, Frances. "Interdepartmental Coordination and Northern Development." CANADIAN PUBLIC ADMINISTRATION. vol.24, no.3. (fall 1981):428-451.

Calef, George W. "The Urgent Need for a Canadian Arctic Wildlife Range." NATURE CANADA. (July/September 1974):3-11.

Dacks, G. "The Case Agains Dividing the Northwest Territories." CANADIAN PUBLIC POLICY. vol.xii. (March 1986):202-213.

Dacks, G. "The Politics of Development in Canada's North." CURRENT HISTORY (May 1984):220-226.

Feit, Harvey A. "Political Articulations of Hunters to the State." INUIT STUDIES. vol.3, no.2 (1979):37-52.

Fuller, W.A. "Of Conservation and Mysticism, Democracy and Things." ARCTIC. vol.32, no.3 (September 1979):179-188.

Gordon, Scott H. "The Economic Theory of a Common Property Resource: The Fishery." JOURNAL OF POLITICAL ECONOMY. vol.LXII (February-December 1954):124-142.

Hardin, Garrett. "The Tragedy of the Commons." SCIENCE. 1243-1242 (13 December 1968).

Thomas, D.C. "At the Crossroads of Caribou Management in Northern Canada." Ottawa: Canadian Nature Federation. 1981.

UBC LAW REVIEW. vol.6, no.1 supplement (June 1971).

"Villagers Win New State Accord on Caribou Convention." ARCTIC POLICY REVIEW. (June 1984):2-6.

Weeden, Robert B. "Northern People, Northern Resources, and the Dynamics of Carrying Capacity." ARCTIC. vol.38, no.2 (June 1985):116-120.

Unpublished Proceedings and Papers

Keith, J.A. "A Canadian Perspective on an Agreement with the United States on Mirgratory Caribou." International Association of Fish and Wildlife Associations. Panel Discussion. 1979/80.

Members of the Porucpine Caribou Management Board. Dawson City, Yukon. Interviews. 28-30 August 1986.

Minutes. Porcupine Caribou Management Board. Dawson City Yukon. 28-30 August 1980.

Minutes. Porcupine Caribou Management Board. Aklavik, Northwest Territories. 4-5 November 1986.

NATIVE PEOPLE AND RENEWABLE RESOURCE MANAGEMENT. The 1986 Symposium of the Alberta Society of Professional Biologists. Edmonton. n.p. 29 April - 1 May 1986.

Riewe, R. and Gamble L. "The Inuit and Wildlife Management Today." Paper presented at the Boreal Institute for Northern Studies Conference, Knowing the North: Integrating Tradition, Technology and Science at the Workshop on Wildlife and Native People: Traditional and Contemporary Ecological Knowledge. Edmonton. n.p. 20-22 November 1986.

Monographs

Asch, Michael. HOME AND NATIVE LAND. Toronto: Methuen, 1984.

Bailey, J.A. PRINCIPLES OF WILDLIFE MANAGEMENT. New York: John Wiley and Sons, 1984.

Bartlett, Richard. SUGJUGATION, SELF-MANAGEMENT, AND SELF-GOVENRMENT OF ABORIGINAL LANDS AND RESOURCES. Kingston, Ontario: Institute of Intergovernmental Relations, 1986.

Berger, Thomas. VILLAGE JOURNEY: THE REPORT OF THE ALASKA NATIVE REVIEW COMMISSION. New York: Hill & Wang, 1985.

Boisvert, David A. FORMS OF ABORIGINAL SELF-GOVERNMENT. Kingston, Ontario: Institute of Intergovernmental Relations, Queen's University, 1985.

Brosted, Jens; Dahl, Jens; Gray, Andrew; et al NATIVE POWER. Oslo, Norway: Universitetsforlaget As, 1985.

Calef, George. CARIBOU AND THE BARREN GROUNDS. Ottawa: CARC, 1981.

Calef, George. JOURNEY OF THE DEMPSTER HIGHWAY. Whitehorse, Yukon: Yukon Conservation Society, 1984.

CARC. NATIONAL AND REGIONAL INTERESTS IN THE NORTH: 3rd NATIONAL WORKSHOP ON PEOPLE, RESOURCES, AND THE ENVIROMENT NORTH OF 60°. Yellowknife, Northwest Territories: CARC, 1983.

Chretien, Jean. STRAIGHT FROM THE HEART. Toronto: McClelland and Stewart-Bantam Ltd., 1985.

Dacks, G. A CHOICE OF FUTURES: POLITICS IN THE CANADIAN NORTH. Toronto: Methuen, 1981.

Dome Petroleum Ltd., et al. BEAUFORT SEA-MACKENZIE DELTA ENVIROMENTAL IMPACT STATEMENT. vol. 4, Biological and Physical Effects and vol. 5, Socio-Economic Effects. n.p., 1982.

Freeman, Milton, M.R. ed. PROCEEDINGS: FIRST INTERNATIONAL SYMPOSIUM ON RENEWABLE RESOURCES AND THE ECONOMY OF THE NORTH. Banff, Alberta: Association of Canadian Universities for Northern Studies, May 1981.

Jull, Peter. POLITICS, DEVELOPMENT AND CONSERVATION IN THE INTERNATIONAL NORTH. Ottawa: CARC, March 1986.

Keith, Robert F. and Wright, Janet B.,eds. NORTHERN TRANSITIONS. vol. II. Ottawa: CARC, 1978.

Kruegar, Ralph R. and Mitchell, Bruce, eds. MANAGING CANADA'S RENEWABLE RESOURCES. Toronto: Methuen. 1977.

Kruse, John, et al. ENERGY DEVELOPMENT AND THE NORTH SLOPE INUPIAT. Anchorage, Alaska: Institute of Social and Economic Research, University of Alaska, 1981.

Leblond, Nancy Russell. PORCUPINE CARIBOU HERD. Ottawa: CARC, 1979.

Manzer, Ronald. PUBLIC POLICIES AND POLITICAL DEVELOPMENT IN CANADA. Toronto: University of Toronto Press, 1985.

McCandless, Robert G. YUKON WILDLIFE: A SOCIAL HISTORY. Edmonton, Alberta: University of Alberta Press, 1985.

Orvik, Nils. NORTHERN DEVELOPMENT: NORTHERN SECURITY. Kingston, Ontario: Centre for International Relations, Northern Studies, Queen's University, 1983.

Page, Robert. NORTHERN DEVELOPMENT: THE CANADIAN DILEMMA. Toronto: McClelland and Stewart, 1986.

Regelin, Wayne L. and Whitten Kenneth R. MOVEMENT PATTERNS OF THE PORCUPINE CARIBOU HERD IN RELATION TO OIL DEVELOPMENT. Alaska

Department of Fish and Game, Division of Game, August 1986.

Simmons, Norman M., Heard, Douglas C. and Calef, George W. CARIBOU: INTER-JURISDICTIONAL MANAGEMENT PROBLEMS. Yellowknife, Northwest Territories: NWT Wildlife Services, 1979.

Urquhart, D.R. THE STATUS AND LIFE HISTORY OF THE PORCUPINE CARIBOU HERD. Yukon, Department of Renewable Resources. 2nd draft, 1986.

Usher, Peter J. THE DEVOLUTION OF WILDLIFE MANAGEMENT AND THE PROSPECTS FOR WILDLIFE CONSERVATION— IN THE NORTHWEST TERRITORIES. Ottawa: CARC, 1986.

Watkins, Mel. ed. DENE NATION: THE COLONY WITHIN. Toronto: University of Toronto Press, 1977.

Westermeyer, William D. and Shusterich, Kurt M., eds. U.S. ARCTIC INTERESTS: THE 1980s AND 1990s. New York: Springer-Verlag, 1984.

Whittington, Michael S. NATIVE ECONOMIC DEVELOPMENT CORPORATIONS: POLITICAL AND ECONOMIC CHANGE IN CANADA'S NORTH. Ottawa: CARC, July 1986.

Whittington, Michael S., coordinator. THE NORTH. Toronto: University of Toronto Press, 1985.

APPENDIX A

INTERVIEW QUESTIONS FOR THE PORCUPINE CARIBOU MANAGEMENT BOARD[200]

A. CREATION

1. Explain the process by which the Porcupine Caribou Management Board came into being.
2. a. What was the role of the Department of Indian Affairs and Northern Development, the Department of Environment, the Government of the Northwest Territories, GNWT, or the Yukon Territorial Government, YTG, in forming the PCMB? Explain.
   b. What contribution did native organizations make?
3. a. The PCMB has been talked about for a number of years. Why do you think it took so long for the Board to be formed when the idea seemed to be favorably received?
   b. How significant, in your view, was the change in government in the Yukon to the formation of the Board?
   c. Were there any significant developments at the level of the GNWT or the federal government that you feel led to, or created a favourable climate, for the signing of the Porcupine Caribou Management Agreement, PCMA?

B. MANDATE

1. What, do you feel, is the job of the PCMB?
2. To what extent do you see the PCMB 'managing' as opposed to 'advising'?
3. Do you anticipate the PCMB will be a help in coordinating policies and practices among the various already existing boards and agencies, the two territories and the federal government?
4. Can the PCMB exercise its 'power' in concrete ways?
5. What sorts of resources are available to the PCMB?
6. Do you feel confident that the PCMB will have the funding to do an adequate job?

C. OPERATION

1. (optional) Whom do you represent on the PCMB?
2. Are the technical resources of the PCMB available to all members?
3. Do you feel comfortable with the format and location of the meetings?
4. Do you feel that the views of all members of the PCMB are given careful consideration before a decision is made?
5. Do you feel that the structure of the PCMB allows it to be 'responsive' to user concerns?
6. How would you describe relations among members of the PCMB (or is it too early to tell)?
7. Do you see the Beverly and Kaminuriak Caribou Management Board serving as a role model? Why or why not?
8. Given that the PCMA states that it will ". . . manage the herd and its habitat to ensure its conservation . . ."(CARIBOU NEWS, December 1985) how do you see the PCMB reconciling proposals for renewable and non-renewable based development in an area?
9. Does the PCMB have any specific plans to ensure that both native experience and scientific information will be considered in the development of its management programme?
10. How will you resolve a situation where native members disagree with the biologists - particularly where there is no money available to carry out a study to prove or disprove the differing views?

D. FUTURE

1. How important is it, in your view, for an international agreement to be signed with the United States?
2. Which members of the PCMB will be doing the negotiating? How was this decided?
3. Do you see any connection between devolution and the formation of the PCMB? Explain.
4. Are you involved, in some capacity, in the land claims negotiations process?
5. Do you see any connection between land claims and the PCMB?
6. How effective is participation on the PCMB in terms of such participation advancing native interests?

---

[200]These questions were used more as a general guide than as specific interview questions.

APPENDIX B

PORCUPINE CARIBOU MANAGMENT AGREEMENT

THIS AGREEMENT made on the 26th day of October, 1985 BETWEEN:

THE GOVERNMENT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development and the Minister of the Environment, (hereinafter referred to as "Canada");

- and -

GOVERNMENT OF YUKON, as represented by the Minister of Renewable Resources, (hereinafter referred to as "Yukon")'

- and -

THE GOVERNMENT OF THE NORTHWEST TERRITORIES, as represented by the Minister of Renewable Resources, (hereinafter referred to as "GNWT");

- and -

THE COUNCIL FOR YUKON INDIANS, (hereinafter referred to as "CYI");

-and -

THE INUVIALUIT GAME COUNCIL, (hereinafter referred to as "IGC");

- and -

THE DENE NATION AND THE METIS ASSOCIATION OF THE NORTHWEST TERRITORIES, (hereinafter referred to as the "Dene/Metis").

WHEREAS the Porcupine Caribou Herd within Canada historically migrates across the boundary between Yukon and the Northwest Territories;

AND WHEREAS the continued well-being of the Porcupine Caribou Herd and the maintenance of its habitat require co-ordinated management, good will and co-operation between Governments and the traditional users of these caribou;

AND WHEREAS the parties hereto recognize the value of these caribou to Canada generally and that a special relationship exists between native users and these caribou.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Government parties hereto, under their respective authorities to enter into agreements of this kind, agree to act within their legislative authorities for the management of the Porcupine Caribou and and the protection and maintenance of Porcupine Caribou habitat, in a co-operative manner together with the other parties to this Agreement, to give effect to its terms as follows:

A. DEFINITIONS

In this is Agreement:

1. "Allowable harvest" means that the level of harvest of the Porcupine Caribou Herd in Canada as set pursuant to the terms of this Agreement.
2. "Board" means the Porcupine Caribou Management Board established herein.
3. "Conservation" means the management and use of Porcupine Caribou and its habitat which best ensures the long term productivity and usefulness of the Herd for present and future generations.
4. "Habitat" means the whole or any part of the biosphere upon which the Porcupine Caribou Herd depends, including all of the land, water and air that it inhabits, crosses or utilizes at any time.
5. "Harvest" means to shoot, kill, harm, capture, trap, or collect for any purpose, or to attempt to engage in such activities.
6. "Management" means the methods and procedures which are necessary to ensure the health and protection of the Porcupine Caribou Herd and the maintenance of its habitat, which may include but are not limited to the following activities associated with wildlife and land management: law enforcement, research, census-taking, monitoring, public information, education and functions provided for in this Agreement.
7. "Minister(s)" means the appropriate responsible Minister of the Government of Canada, Government of Yukon or Government of the Northwest Territories.
8. "Native user" means a person whose entitlement to the subsistence harvest of Porcupine

Caribou has been recognized by a native user community and who is:

(a) an aboriginal person who is a traditional user of the Porcupine Caribou or the descendant of such a person; or

(b) an aboriginal person who is a current user of the Porcupine Caribou at the time of signing this Agreement and meets a reasonable residency requirement satisfactory to his native user community; or

(c) A Canadian aboriginal person who has not traditionally or currently harvested the Porcupine Caribou but meets a reasonable residency requirement satisfactory to the Board.

9. "Native User Community" means any one of the communities of Old Crow, Dawson, Mayo, Fort McPherson, Arctic Red River, Aklavik, Inuvik or Tuktoyaktuk and may also include such other new communities as may be determined through native user agreements in effect from time to time. The native users within these communities shall be represented by a Chief and Band Council, A Hunters and Trappers association or other appropriate native leadership body, including those bodies defined through the comprehensive land claims process.

10. "Parties" means the parties to this Agreement and may include their successors or assigns, as defined through the comprehensive land claims process or otherwise.

11. "Porcupine Caribou" means members of that herd of barren ground caribou which regularly bears its young in north-eastern Alaska and north-western Yukon and historically moves southward within Alaska, Yukon and the Northwest Territories for the winter. Its Canadian range, the limits of which are defined within Yukon by current Yukon game management subzones, is generally depicted for Yukon and the Northwest Territories on the map attached as Appendix 1 to this Agreement.

12. "Preferential Right" means the right to harvest Porcupine Caribou for subsistence usage and to be allocated, subject to conservation and the terms of this Agreement, quantities of Porcupine Caribou sufficient to fulfill the native users' requirements for subsistence usage before there is any allocation for other pruposes, such right of allocation being provided for by the establishment, when necessary, of the allocation hereinafter referred to as the "native user allocation."

B. OBJECTIVES OF THE PARTIES

1. To co-operatively manage, as a herd, the Porcupine Caribou and it habitat within Canada so as to ensure the conservation of the Herd with a view to providing for the ongoing subsistence need of native users;

2. To provide for the participation of native users in Porcupine Caribou Herd management;

3. To recognize and protect certain priority harvesting rights in the Porcupine Caribou Herd for native users, while acknowledging that other users may also share the harvest;

4. To acknowledge the rights of native users as set out in this Agreement; and

5. To improve communications between Governments, native user and others with regard to the management of the Porcupine Caribou Herd within Canada.

C. ESTABLISHMENT OF THE PORCUPINE CARIBOU MANAGEMENT BOARD

1. The Government parties to this Agreement shall etablish a Board, to be known as the Porcupine Caribou Management Board, to provide advice and recommendations to the Ministers.

2. Subject to paragraph 3(f) of this Part:

(a) The Board will always include representation from each of the parties to this Agreement;

(b) The Board will always contain equal Government and native representation and equal representation of native users from Yukon and the Northwest Territories.

3. Eight voting members shall be appointed within a reasonable time to the Board as follows:

(a) Canada shall appoint two members to represent Yukon;

(b)(i) Yukon shall appoint two members to represent Yukon;

(ii) CYI shall nominate two members to represent the native users of Old Crow, Dawson and Mayo;

(c)(i) GNWT shall appoint one member to represent GNWT;

(ii) The Dene/Metis shall nominate one member to represent the Dene/Metis native users of Aklavik, Inuvik, Fort McPherson and Arctic Red River;

(iii) IGC shall nominate one member to represent the Inuvialuit native users of Aklavik, Inuvik and Tuktoyaktuk;

(d) Upon receipt of notification from the parties, the Minister shall confirm the nominations and appointments as required;

(e) The members of the Board shall be appointed for a term of five years, subject to the right of the parties to terminate the appointment of their respective appointees at any time and have Board members reappointed in accordance with the above terms of reference;

(f) If, within a reasonable time, nominations or appointments are not made as provided for in this paragraph, the Board may discharge its responsibilities with those members who have been nominated or appointed.

4. (a) A majority of the members of the Board shall nominate from outside the membership of the Board a Yukon resident as the first Chairman and shall notify the Ministers accordingly;

(b) The Board shall determine criteria for the nomination of subsequent Chairmen;

(c) If agreement on nomination of a Chairman cannot be reached within a reasonable time, any party to this Agreement may refer the matter to a Judge of the Supreme Court of the Yukon Territory acting as an arbitrator under the provisions of the Arbitration Ordinance and if the Court shall not provide a Judge, then to an arbitrator under the provisions of the Arbitration Ordinance;

(d) The majority of the members of the Board shall confirm the acceptability of the Chairman as nominated and shall notify the Ministers of its confirmation;

(e) The Chairman shall have tenure for a term of five years and may, with the approval of the Board, serve additional terms;

(f) Upon receipt of notification from the Board, the Ministers shall confirm the apointment or dismissal of Chairman as required.

D. DUTIES OF THE BOARD

1. The Board shall establish and maintain communication with native users of the Porcupine Caribou, between the native users of the Porcupine Caribou, between native users and Governments, among Governments and with other users, in order to assist in co-ordinated management and conservation of Porcupine Caribou and its habitat.

2. The Board shall determine the actions that are necessary to achieve the objectives described herein and shall recommend them to the Minister.

3. The Board shall hold such public meetings as are reasonably necessary to report on and discuss with native users and others its findings and recommendations and, in any event, shall inform the native user communities in writing of the Board's recommendations to the Minister.

4. The Board shall review technical and scientific information relevant to the management of the Porcupine Caribou Herd and its habitat and may advise the Minister of its adequacy.

5. The Board shall encourage native users and other harvesters of the Porcupine Caribou to participate in the collection of statistics and biological information.

6. The Board shall maintain a list of eligible users for each native user community and up-to-date information on the sub-allocation of the native user allocation among communities, all of which shall be made available to Governments for management purposes.

E. RECOMMENDATIONS OF THE BOARD

Without restricting the generalilty of Part D of this Agreement, the parties agree that the Board may do the following:

1. The Board may make recommendations to the Minister on any matters affecting the Porcupine Caribou and its habitat, including recommendations related to the making of policy, legislation and regulations regarding:

(a) management strategies for the Porcupine Caribou Herd;

(b) a herd management plan for the Porcupine Caribou Herd;

(c) guidelines for native users' participation in Porcupine Caribou Herd management plans;

(d) training required to enable native users to participate in the management of the

Porcupine Caribou Herd and the conservation of its habitat;

(e) a predator managment plan in respect of the Porcupine Caribou Herd, provided that no such plan shall be put into effect until the Minister has consulted with the Board;

2. The Board may also:

(a) review and recommend development of Porcupine Caribou research proposals;

(b) review available information and recommend further research where there appears to be a need;

(c) review and recommend methods of data collection and presentation;

(d) review the conservation and management of the Porcupine Caribou Herd and its habitat and make appropriate recommendations so as to ensure that productivity is maintained; and,

(e) recommend criteria according to which non-native subsistence users may qualify to share in the native user allocation from the Porcupine Caribou Herd, if the affected native user community approves.

3. (a) Because of the dependence of caribou on its habitat the Board may make recommendations to other boards and agencies, as well as to the Minister, on land use planning and land management throughout the Canadian range of the Porcupine Caribou Herd or any portion of it. Recommendations of measures to esure the conservation and protection of lhabitat shall include, but are not limited to, measures related to specific projects, plans or activities which may:

(i) impede, delay or disrupt Porcupine Caribou movements, affect behavioural patterns or reduce productivity;

(ii) affect Procupine Caribou habitat; or

(iii) affect interactions between native users and Porcupine Caribou;

(b)The Board may also identify sensitive habitat areas requiring special protection and recommend measure to protect such areas.

F. MINISTER'S RESPONSIBILITIES

1. The Minister shall consider the recommendations of the Board and report his decisions or comments in a timely manner. The Minister shall, within thirty days of receipt or recommendations, either provide the Chairman with his response or, where he is not able to respond fully, he shall so inform the Chairman and advise him when his full response will be provided. When advised by the Board that an emergency situation has arisen and that a decision on a recommendation is necessary forthwith, the Minister shall govern himself accordingly.

2. The Minister may consult with the Board on any matter related to the Porcupine Caribou and its habitat.

3. Recommendations of the Board shall be submitted in writing to the Minister.

4. If the Minister disagrees with a recommendation or any part thereof, he shall refer the matter back to the Board for reconsideration with due consideration for any time schedule imposed by any statutory or regulatory requirements.

5. Where, as the result of a matter being referred back to the Board recommendations are submitted, the Minister may accept or reject the recommendations in whole or in part.

6. Where the Minister rejects a recommendation in whole or in part, he shall provide the Board with reasons therefore.

7. Where it appears to the Minister that an emergency situation has arisen which affects the well being of the Porcupine Caribou or its habitat, and where time does not permit consultation with the Board, the Minister may take such action as is necessary before consulting with the Board.

8. Where emergency action has been taken pursuant to paragraph 7 above, the Minister shall forthwith inform the Chairman and solicit the continuing advice of the Board.

G. PROCEEDINGS OF THE BOARD

The Board shall establish and make known, from time to time, rules and procedures for its functioning, provided however, that:

(a) thirty days' notice of meeting shall be given by mail, telephone, telegram or other appropriate means;

(b) the Board shall establish its own quorum;
(c) decisions of the Board shall be by consensus wherever possible, and shall always require a majority vote in favour, with each member having one vote;
(d) the Board may decide that alternates be appointed to represent members when they are unable to attend Board meetings and shall establish the terms and conditions of the appointments. If it is decided that alternates are necessary, the parties shall each appoint alternates forthwith according to the terms provided for the appointment of Board members in Part C of this Agreement;
(e) the Chairman shall, in the event of a deadlock or tie vote, be responsible for resolving the disagreement fo the Board and shall, where necessary, cast the deciding vote on any issue which cannot otherwise be resolved;
(f) the Board shall hold formal meetings at least twice yearly unless it decides otherwise;
(g) the Board shall keep summary minutes and records of all meetings and circulate them to its members;
(h) the Board may establish and instruct such committees as it deems necessary to carry out its functions.

H. BOARD SECRETARIAT

There shall be a secretariat to adminster the operations of the Board which shall be responsible to the Board under the direction of the Chairman. The secretariat shall receive and distribute information, prepare and circulate minutes of Board meetings and perform such other functions as the Board requires.

I. FINANCES

1. Subject to the terms and conditions of this Agreement and to funds being appropriated by legislative authority on an annual basis, the Goverment parties shall fund reasonable costs of the Board and Secretariat in equal portions and in such amounts as agreed annually, to ensure Board and Secretariat functioning in a manner herein stated.
2. For further clarity, particular expenditures of the Board which are to be shared by the funding parties may include:
(a) any salary or honorarium, and all travel, accomodations and related expenses incurred while working on Board activities, paid to the Chairman, provided the same is in accordance with Treasury Board guidelines;
(b) the production of an annual report and its distribution;
(c) a modest technical review capability in respect of primary research conducted by Governments and other sources;
(d) the production of information or educational material, such as newsletters; and
(e) such other costs as the funding parties may agree upon.
3. The Government parties shall be responsible for any salary or honorarium, and all travel, accomodation and related expenses of their Board members. In addition, Yukon shall be responsible for these expenses related to the participation of their Board members. In addition, Yukon shall be responsible for these expenses related to the participation of the Board members for CYI and GNWT shall be responsible for for these expenses related to the participation of the Board members for IGC and Dene/Metis.
4. The Board shall prepare and submit annual budgets for all expenditures under its control to the appropriate Government parties and shall be accountable for the expenditure of the Board and secretariat.
5. The Board shall account annually for all monies received and disbursed by the Board and secretariat and records of this accounting shall be made available to any of the parties to this Agreement for inspection upon thirty days written notice to the Chairman.

J. ALLOCATION OF ANNUAL ALLOWABLE HARVEST IN CANADA

1. Any of the parties to this Agreement may provide the Board with information that will, in the opinion of the submitting party, assist the Board in determining its recommendations of the annual allowable harvest from the Porcupine Caribou Herd.
2. (a) After the Board has considered all relevant information the Chairman shall submit its report to the Ministers to facilitate the enactment of any necessary regulations.
(b) The report of the Board may include, but is not restricted to, recommendations

related to the following:

(i) annual allowable harvest;
(ii) categories and priorities of harvest allocations;
(iii) methods of harvest;
(iv) areas of harvest;
(v) means of access;
(vi) seasons;
(vii) age and sex of Porcupine Caribou to be harvested; and
(viii) research study requirements related to the harvest.

(c) In determining the native user allocation the Board shall take into account, among other things, the following criteria:

(i) food and clothing requirements of the native users;
(ii) usage patterns and levels of harvest by the native users
(iii) ability of caribou and other wildlife populations to meet the subsistence requirements of the native users and
(iv) projections of changes in caribou populations.

(d) The Board may also include in its report the appropriate principles, considerations and procedures that should be used in order to calculate a total annual allowable harvest and its allocations, and more generally to define the conservation limit for the harvest of the Porcupine Caribou Herd.

(e) If the Porcupine Caribou Herd is healthy and of sufficient numbers to satisfy all reasonable competing needs, the Board may recommend that the setting of an annual allowable harvest is not required.

3. The territorial Governments shall, upon taking into consideration the recommendations of the Board and consistent with the preferential right of native users to harvest:

(a) establish the total annual allowable harvest of Porcupine Caribou in Canada; and
(b) determine the allocation of the annual allowable harvest in Canada for native users, taking into account the criteria set forth in paragraph 2(c) of this Part and the reservation of two hundred and fifty (250) Porcupine Caribou referred to in paragraph 4 below.

4. Taking into consideration the interests of other users, the territorial Governments shall allocate as they see fit from that portion of the annual allowable harvest not allocated under paragraph 3(b) of the Part, ~~which~~ shall consist of no fewer than two hundred and fifty (250) Porcupine Caribou, and shall regulate harvesting pursuant to their respective legislative authorities.

5. (a) The native users shall sub-allocate the native user allocation among themselves on a community basis.

(b) The details of the sub-allocation shall be provided to the Board annually by CYI, IGC and the Dene/Metis on behalf of the native user communities represented by them respectively so that the necessary information will be available for management purposes.

(c) The respective hunting areas for native user communities are identifiedd on the map attached as Appendix II to this Agreement.

(d) When access to its community hunting area has been granted to a native user community to a native user or users from another community, notice in a form acceptable to the appropriate Governments shall be provided.

6. Where a sub-allocation of Porcupine Caribou is made to the native users of Dawson and Mayo, the Yukon Wildlife Management Board (that is referred to in the Yukon Indian Agreement-in-Principle) and Yukon shall be so informed by the Board.

7. The parties recognize the respective responsibilities of the Yukon Wildlife Management Board for all wildlife south of 65 30' in Yukon and of the Porcupine Caribou Management Board as set out in this Agreement. Therefore, in territorial game management subzones or parts thereof, where the Hart River and Wernecke Caribou or other herds in Yukon mix with the Porcupine Caribou, Yukon may, on the advice of and in consultation with the appropriate board(s), take the necessary measures to protect these herds that mix with the Porcupine Caribou Herd for such periods of time as are required.

8. The parties recognize the special dependence of all native users on the Porcupine Caribou and in particular, the unique dependence of the native users of Old Crow on the Porcupine Caribou.

K. THE RIGHTS OF NATIVE USERS

1. The rights of native users as set out in this Agreement are subject to laws of general application with regard to conservation and public safety.
2. Subject to the terms of this Agreement, native users shall have a preferential right to harvest Porcupine Caribou.
3. Native users shall have the right to harvest Porcupine Caribou without being required to pay fees or obtain licences, permits or tags except that licences, permits or tags may be required for conservation and management purposes. In such circumstances any such licences, permits and tags will be issued locally and without cost.
4. The Government parties to this Agreement shall use their best efforts to enact any laws and regulations to allow native users the right to transport lawfully harvested Porcupine Caribou across any jurisdictional boundary within the Canadian range of the Herd.
5. Native users shall have the right to employ traditional and current methods to harvest the Porcupine Caribou and the right to both possess and use all equipment reasonably necessary to exercise that right.
6. The development of list of eligible users shall be made in each native user community with the assistance of the appropriate native leadership body. These lists shall be provided to the Board annually by CYI, IGC and the Dene/Metis on behalf of the native user communities and shall be updated as required. 7. Notwithstanding paragraph 3 of this Part, native users may be required for conservation and management purposes to show evidence that they are native users.

L. COMMERCIAL HARVEST

1. There shall be no commericial harvest of Porcupine Caribou in Canada.
2. Notwithstanding paragraph 1 above, native users may:
   (a) barter or trade with other native users for caribou meat; and
   (b) subject to paragraphs 2(c) and 2(d) of this Part, sell caribou meat to other native users who are unable to hunt by virtue age or illness or other disadvantates or where there is an emergency situation when access for the hunting of caribou is not feasible for a native user community, provided that the money received for the sale does not exceed the reasonable expenses incurred.
   (c) The Board shall establish guidelines from time to time on:
      (i) the circumstances that qualify a native user as being disadvantaged, for example when a family does not have a provider;
      (ii) categories of costs which may be considered reasonable expenses;
      (iii) the circumstances that would create an emergency situation when access for the hunting of caribou is not feasible for a native user community.
   (d) The Board shall establish procedures for the expeditious consideration of individual situations contemplated by paragraph 2(b) of this Part which do not fall within the guidelines established pursuant to paragraph 2(c) above.
3. Native users shall be permitted to sell the non-edible parts of legally harvested Porcupine Caribou.
4. This part does not apply to commericial guiding or outfitting activities.

M. INFORMATION

1. All parties to this Agreement agree to use their best efforts to provide the Board with all available information requested by it that is necessary to carry out its functions.
2. The Board may advise the parties on the adequacy of information provided to it by native users and others.
3. Subject to paragraph 4 of this Part, the Board shall provided available information upon request and may distribute its reports and recommendations to the public.
4. The Board will respect the confidentiality of such information provided to it on a confidential basis.

N. GENERAL

1. The parties hereto shall jointly and severally indemnify and save harmless the Board and

the individual members thereof, against any and all liability, loss, damage, cost or expenses, which the Board, or its individual members jointly or severally incur, suffer or are required to pay as a consequence of any contract or other obligation lawfully undertaken in accordance with the terms of this Agreement.

2. All public reports summaries or other doccuments prepared or otherwise completed by the Board shall become the joint property of all parties hereto and any and all income derived therefrom shall be jointly shared among the parties in proportion to the expenditures incurred by each party generating such income.

3. The parties hereto agree to be bound by this Agreement, notwithstanding subsection 14(2) of the **Northwest Territories Act**, R.S.C. 1970, and subsection 17(3) of the **Yukon Act**, R.S.C. 1970.

4. The Government parties to this Agreement will attempt to enact any laws and regulations that may affect the Porcupine Caribou Herd and its habitat in a manner consistent with this Agreement.

5. This Agreement may be amended following unanimous approval in writing by the parties hereto, and the Government parties agree to attempt to secure passage of any necessary legislation.

6. Those parties to this Agreement which are negotiating parties in comprehensive land claims shall act as soon as possible following the signing of this Agreement to incorporate this entire Agreement by reference by means of sub-agreement or interim agreement, into the completed or ongoing Yukon Indian, Inuvialuit and Dene/Metis comprehensive land claims respectively. If any consequential amendments to existing sub-agreements, interim agreements or overall agreements are required as a result of the signing of this Agreement, they shall be made no later than the time of incorporation by reference referred to herein.

7. It is the intention of the parties to this Agreement that its provisions not be used to interpret or derogate from the provisions of any comprehensive land claims settlement and that the provisions of any comprehensive land claims settlement not be used to interpret the provisions of this Agreement.

8. In recognition of the fact that the Porcupine Caribou Herd is an international resource with a substantial part of its habitat in Alaska, the parties agree that it is desirable to negotiate a Porcupine Caribou bilateral agreement following the completion of this Agreement. In recognition of the fact that the provisions of a bilateral agreement might involve aboriginal and treaty rights within the meaning of the **Constitution Act, 1982**, as well as the legislative and management responsibilities of the territorial Governments and the Porcupine Caribou Management Board in its role, Canada agrees to consult with the other parties to this Agreement prior to and during the course of any such bilateral agreement negotiations.

9. For greater certainty, and pending compliance with paragraph 6 of this Part, as well as final settlement of the Yukon Indian, Inuvialuit and Dene/Metis comprehensive land claims, it is intended that this Agreement shall come into full force and effect upon signature by the parties and that the Board shall carry out its functions in accordance with the terms of this Agreement.

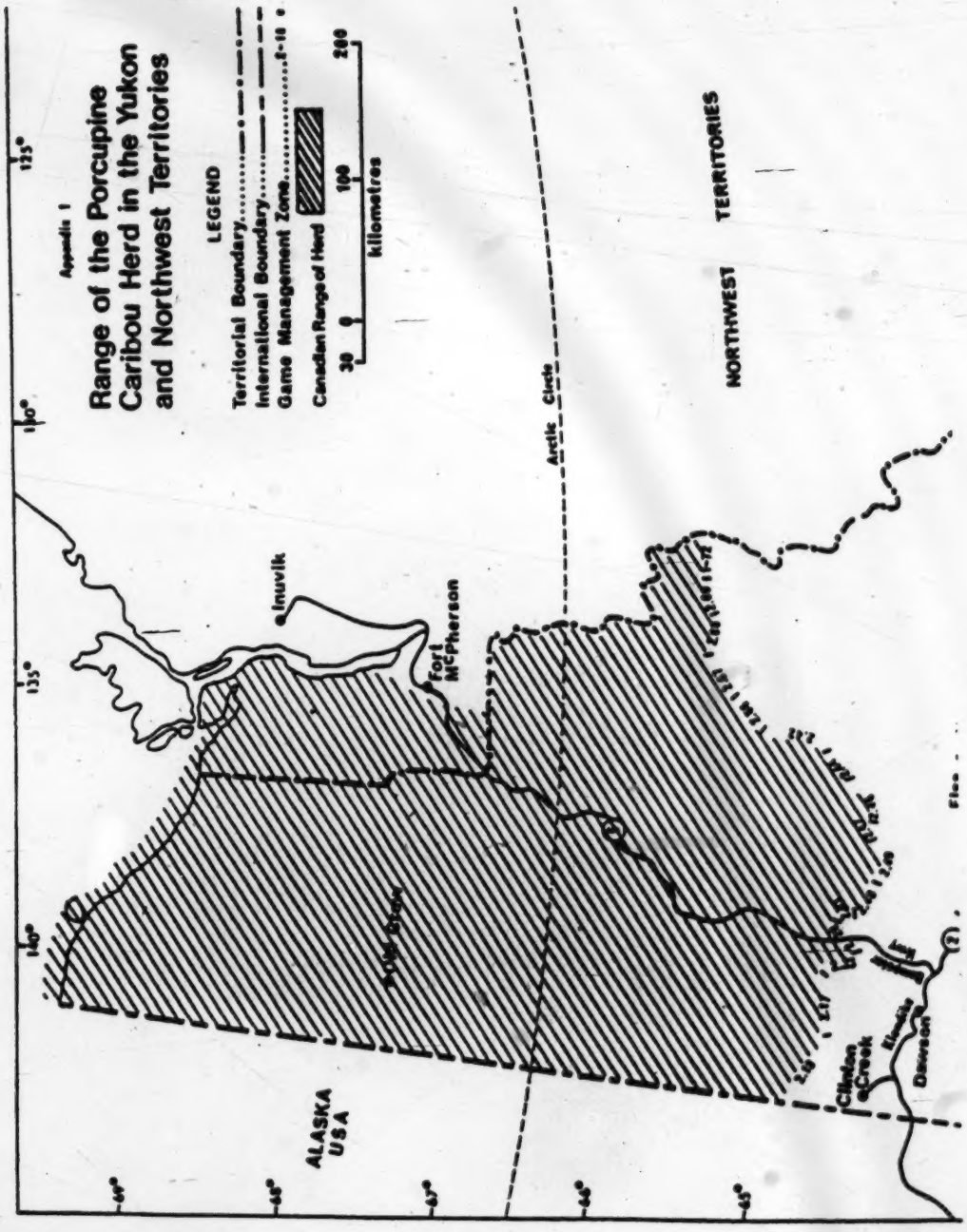

Figure 7.1 Range of the Porcupine Caribou Herd in the Yukon and Northwest Territories

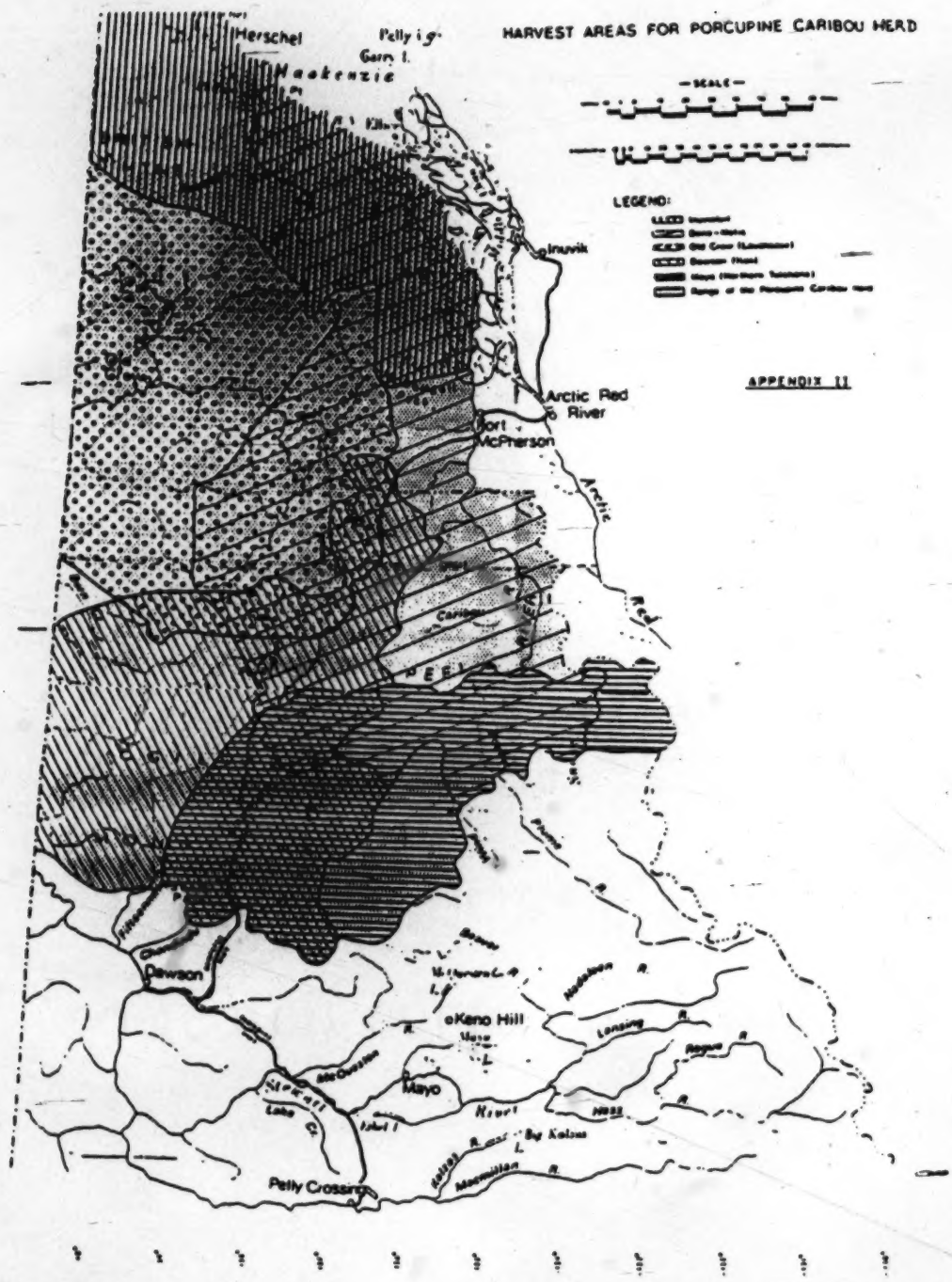

Figure 7.2 Harvesting Areas for the Porcupine Caribou Herd

APPENDIX C

BEVERLY-KAMINURIAK BARREN GROUND CARIBOU MANAGEMENT AGREEMENT

THIS AGREEMENT made on the 3rd day of June A.D. 1982
BETWEEN
THE GOVERNMENT OF CANADA, as represented by the Minister of Indian Affairs and Northern Development and the Minister of Environment, (hereinafter referred to as "Canada");

- and -

THE GOVERNMENT OF MANITOBA, as represented by the Minister of Natural Resources, (hereinafter referred to as "Manitoba");

- and -

THE GOVERNMENT OF SASKATCHEWAN, as represented by the Minister of Northern Saskatchewan, (hereinafter referred to as "Saskatchewan");

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES, (hereinafter referred to as the "Commissioner").
WHEREAS the Kaminuriak herd and Beverly herd of barren ground caribou historically migrate across provincial and territorial boundaries;
AND WHEREAS the continued well-being and restoration of these herds and their habitat requires co-ordinated management goodwill and co-operation amongst the above governments and the traditional users of these caribou;
AND WHEREAS the parties hereto recognize that, as well, as the value of the caribou to all Canadians generally, a special relationship exists between traditional users and the caribou;
NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto under the authority of:

(a) The Canada Wildlife Act -sections 5,6 and 9;
(b) The Northwest Territories Wildlife Ordinance - section 27;
(c) The Manitoba Wildlife Act - section 84;
(d) The Saskatchewan Wildlife Act - sections 10, 63(b) and 63(f), and The Saskatchewan Federal-Provincial Agreements Act - sections 3,4 and 5 agree that:

A. DEFINITIONS
In this Agreement:
1. "Kaminuriak herd" means that herd of barren ground caribou which regularly bears its young near Kaminuriak Lake in Keewatin, Northwest Territories and historically moves southward into Manitoba and Saskatchewan for the winter;
2. "Beverly herd" means that herd of barren ground caribou which regularly bears its young near Beverly Lake in Keewatin, Northwest Territories and historically moves southward into Saskatchewan and Manitoba for the winter;
3. "Traditional Users" means those persons recognized by the local population on the caribou range as being persons who have traditionally and/or currently hunted caribou for subsistence.

B. THE BEVERLY AND KAMINURIAK CARIBOU MANAGEMENT BOARD
1. A joint management board shall be established to be known as the Beverly and Kaminuriak Caribou Management board, hereinafter referred to as the "Board", having the following objectives:

(a) to co-ordiinate management of the Beverly and Kaminuriak herds in the interest of tradtional users and their descendants, who are or may be residents on the range of the caribou, while recognizing the interest of all Canadians in the survival of this resource.
(b) to establish a process of shared responsibility for the development of management programs between the parties hereto and the traditional users of the Beverly and Kaminuriak herds.
(c) to establish communications amongst traditional users, between traditional users and the parties hereto, and amongst the parties hereto in order to ensure

co-ordinated caribou conservation and caribou habitat protection for the Beverly and Kaminuriak herds.

(d) to discharge the collective responsibilities for the conservation and management of caribou and caribou habitat within the spirit of this Agreement.

2. Support shall be provided be the parties hereto to the Board in its efforts to achieve co-ordinated management of the Beverly and Kaminuriak herds by responding promptly to recommended measures.

C. BOARD RESPONSIBILITIES

Without restricting the generality of clause B of this Agreement, the parties agree that the Board shall have the following duties and responsibilities:

1. To develop and make recommendations to the appropriate governments and to the groups of traditional caribou users for the conservation and management of the Beverly and Kaminuriak herds of barren ground caribou and their habitat in order to restore the herds, as far as reasonably possible, to a size and quality which will sustain the requirements of traditional users. Such recommendations may include, but are not necessarily limited to:

(a) and Kaminuriak herds and the allocation of that harvest amongst the Northwest Territories and the provinces of Saskatchewan and Manitoba;

(b) criteria for regulating the methods of harvest;

(c) methods of traditional user participation to assist in the management of the Beverly and Kaminuriak caribou herds;

(d) caribou research proposals;

(e) recommended standardized data collection and presentation;

(f) a herd management plan for each of the Beverly and Kaminuriak herds which may include consideration of predator management.

2. To monitor the caribou habitat over the entire ranges of the Beverly and Kaminuriak herds so as to facilitate the maintenance of productive caribou habitat.

3. To conduct an information program and hold such public meetings as are necessary to report on and discuss with users its responsibilities, findings and progress.

4. To assess and report on the operation of its herd management plan to appropriate governments and traditional user groups.

5. To submit to the parties hereto annual reports which shall include:

(a) a summary of Board activitiies, recommendations and responses by governments and traditional users;

(b) a review of the state of the Beverly and Kaminuriak caribou herds and their habitat;

(c) a summary of harvests by jurisdiction and community;

(d) a financial statement for the operation of the Board; such reports to be arranged by the parties hereto to be translated into the languages of the traditional users.

6. To consider any other matters respecting the management of barren ground caribou that are referred to the Board by the parties hereto.

D. MEMBERSHIP OF THE BOARD

1. Thirteen members shall be appointed to the Board as follows:

(a) the Minister of Indian Affairs and Northern Development, Government of Canada; the Minister of the Environment, Government of Canada; the Minister of Northern Saskatchewan, Government of Saskatchewan; the Minister of Natural Resources, Government of Manitoba; and the Minister of Renewable Resources, Government of the Northwest Territories shall each appoint one senior official from their respective ministries for a total of five members.

(b) the Minister of Renewable Resources, Government of the Northwest Territories shall:

(i) where recommended by the Keewatin Wildlife Federation, appoint two residents from the communities in the southern Keewatin region of the Northwest Territories;

(ii) where recommended by the Dene Nation, appont one resident froml the communities in the South Slave Region of the Northwest Territories;

(iii) where recommended by the Metis Association of the Northwest Territories, appoint one resident from the communities in the South Slave region of the Northwest Territories;

for a total of four members.

(c) the Minster of Northern Saskatchewan, Government of Saskatchewan, shall appoint two residents from the communities of Northern Saskatchewan for a total of two members;

(d) the Minister of Natural Resources, Government of Manitoba, shall appoint two residents from the communities of Northern Manitoba for a total of two members.

2. The members of the Board shall be appointed for a term of three years, subject to the rights of the parties to terminate the appointment of their respective appointees at any time and reappoint Board Members in accordance with the above.

E. BOARD RULES AND PROCEDURES

1. The Board shall establish in writing from time to time rules and procedures for its functioning, provided however that:

(a) the Chairman and Vice-Chairman shall be elected from amongst the members of the Board by secret ballot;

(b) the election and replacement of the Charman and the Vice-Chairman shall be by simple majority;

(c) thirty days notice of meeting shall be given by mail, telephne or telegram, as appropriate;

(d) seven members shall constitute quorum;

(e) decisions of the Board shall be by consensus wherever possible, and shall always require a majority voting in favour, with each member having one vote;

(f) no voting by proxy shall be allowed;

(g) the Board shall hold formal meetings twice yearly or more often as necessary at the call of the Chairman;

(h) the Board shall keep summary minutes and recods of all its meetings and circulate them amongst its members;

(i) the Board shall establish or dissolve standing committees as it deems necessary to carry out its functions, and set the terms of reference for such standing committees, and

(j) the Board members unable to be present at Board meetings shall receive notice of Board recommendations thirty (30) days in advance of submission to any minister for action, except where there is consent of all Board members in which case recommendatons to the Minister(s) can be made forthwith.

F. FINANCES

1. Subject to the terms and conditions of this Agreement and to funds being appropriated by the legislative authority in respect of each party on an annual basis, the parties hereto shall annually provide funds necessary to ensure the Board functioning in a manner hereinbefore stated provided, however, that all costs for the Board shall not exceed $75,000.00 annually and that all such annual costs lshall be shared amongst the parties to this Agreement in such proportion as hereinafter provided in section 2.

2. Prior to the administrative costs for the Board being eligible to be shared by the parties hereto, the Board shall be required to submit to each part an annual estimate of the financial administrative costs not exceeding $75,000.00 in each year, and each part shall in writing within thirty days of receipt thereof, indicate its approval or disapproval for such budget and provide reasons therefore. In the event that a majority of the parties hereto approve the annual budget for the administrative costs the budget shall be shared by all parties hereto in the following proportions accordance with the following:

(a) two-fifths by Canada; and

(b) one-fifth by each of the remaining parties.

3. Administrative costs to be shared amongst the parties hereto shall include expenditures related to:

(a) a secretariat to provide for and follow up on meetings, record and distribute minutes, provide members with informational support, and undertake such other

organizational arrangements as the Board may require;
(b) the production of an annual report and its distribution;
(c) a modest independent research review capability;
(d) the production of a newsletter; and
(e) such other costs as the parties may agree upon.

4. Each party shall be responsible for funding the expenses for salaries or honoraria and other incidental travel expenses, including transportation, meals, accomodation related to Board member appointed or confirmed by that party. The provisions for said expenses shall be in addition to the annual administrative costs provided in section 1 hereinabove.

5. On the anniversary date of this Agreement, the Board shall annually account for all monies received and disbursed and said records shall be available to any of the parties for inspection upon thirty days written notice to the Chairman.

G. GENERAL

1. the parties hereto shall jointly an severally indemnify and save harmless the Board and the individual members therof, against any and all liability, loss, damage, cost, or expenses, which the Board, or its individual members jointly or severally incur, suffer, or are required to pay as a consequence of any contractual obligation undertaken in accordance with the terms of this Agreement.

2. All reports, summaries or other documentation his Agreement shall become the joint property no of this Agreement shall become the joint property of all parties hereto and any and all income derived therefrom shall be jointly shared amongst the parties in proportion to expenditures incurred by each party in generating such income.

3. This Agreement shall take effect on the 3rd day of June, A.D. 1982, and shall terminate on the 3rd day of June, A.D., 1992, unless sooner terminated by any party upon six months' notice in writing to the other parties.

4. This Agreement may be amended at any time by an exchange of letters following unanimous approval by the parties hereto.